

***United States Court of Appeals
for the Second Circuit***



APPENDIX

77-1492

77-1492

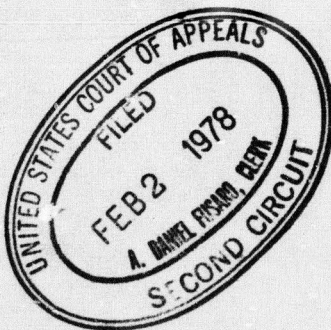
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,
Appellee,
-against-
RAYMOND PHILLIPS,
Defendant-Appellant.

B
P/S

On Appeal from the District Court of the United States
for the Southern District of New York

APPELLANT'S APPENDIX



WILLIAM S. ELLIS
Attorney for
Defendant-Appellant
51 East 42nd Street
New York, New York 10017

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MINIAL DOCKET - U.S. District Court

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PHILLIPS, RAYMOND

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Escape fr. Fed. Treatment Center.

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BAIL • RELEASE

☐ AMT	☐ Release
☐ Date	☐ Per. Reg.
☐ Set	☐ PEA
☐ Date	☐ Conditional
☐ Date	☐ Unconditional
☐ Date	☐ Surety Bond
☐ Date	☐ Cash
☐ Date	☐ Warrant
☐ Date	☐ Other

KEY DATES & INTERVALS

ARREST or	INDICTMENT	ARRAIGNMENT	TRIAL	SENTENCE
U.S. Custody Began	Information ☐ 6-27-77	7-7-77	Voir Dire 10-17-77	Disposition of Charges 11-17-77
Summons Served	Indict. Waived ☐	1st Plea 7-7-77	Trial Began 10-17-77	☒ Convicted
First Appearance	Superseding ☐ Indict/Info ☐	Final Plea	Trial Ended 11-17-77	☐ Acquitted
	In Charging District			☐ Dismissed
				☐ On Government Motion

DATE	INITIAL NO.	INITIAL APPEARANCE DATE	INITIALS	OUTCOME

David W. O'Connor
91-1941

ATTORNEYS
William S. Ellis
51 East 42nd St
NY, NY 10017
Tel: 212-867-0180

DATE	DOCUMENT NO.	PROCEEDINGS	EXCHANGABLE COPY
6-27-77		Filed indictment.Werker, J.	
6-29-77		Filed Govt's. affidavit for a writ of habeas corpus directed to Warden, F.C.I., Danbury Conn. Writ Issued ret., 7-7-77.	
7-7-77		Deft. produced on a writ. Court directs a plea of not guilty be entered. Referred to Magistrate for assignment of counsel and to fix bail. Case assigned to Gagliardi, J. for all purposes.....Ward, J.	
07-12-77		Filed documents forwarded by magistrate: 7-7-77 Deft. present, no counsel available. Deft. consented to be remanded without bail, pending an interview with a court app't. atty. 7-8-77 CJA assied: Bernard Seidler. 7-11-77 Bail fixed by Mag. Raby at \$10,000. cash/surety. Deft. remanded.	
07-21-77		Deft. (atty. Peter Sherman) pre-trial conf. held. Trial set for 8-22-77 at 10AM. Gagliardi, J.	2 7-21- E 1
07-18-77		Deft. (atty. William S. Ellis) PTC held, trial set for 10-17-77 at 10AM. Bail cont'd. Gagliardi, J.	2 9-18- E 1

26-77 Filed Notice of appearance by atty William S. Ellis-51 E.
 42nd St. NY, NY 10017-Tel-212-867-0180
 10-04-77 Filed CJA 20 appointment of counsel: William Ellis.
 10-17-77 Before Gagliardi, J. Jury trial begun.
 10-18-77 Trial cont'd.
 10-19-77 Trial cont'd. (hung jury) deft.'s motion for a mistrial-
 granted. Deft.'s motion for a judgment of acquittal-denied.
 New trial date 10-25-77 at 10AM. Gagliardi, J.
 10-17-77 Filed CJA 20 approval for payment of fees of atty.
 Bernard Alan Seidler. Gagliardi, J. issued all copies.
 10-31-77 Before Judge Gagliardi. 2nd jury trial begun and continued.
 11-1-77 Trial cont'd & concluded. Jury returns with a verdict of
 guilty as charged. P.S.I. ordered. For sent. 11-30-77.
 Deft. remanded. Gagliardi, J.
 11-1-77 Filed deft.'s request to charge.
 11-30-77 Filed JUDGMENT (atty. William Ellis) 15mos. impr. Gagliardi, J.
 issued all copies.
 12-2-77 Filed notice of appeal from judgment of 11-30-77.
 mailed notices.

FINE AND RESTITUTION PAYMENTS

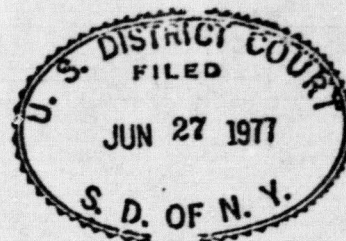
RECEIPT NUMBER	C.D. NUMBER	DATE	RECEIPT NUMBER	C.D. NUMBER

A TRUE COPY
 RAYMOND E. BURCHARDT, Clerk

By *[Signature]*
 Deputy Clerk



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



-----x
UNITED STATES OF AMERICA :

-v- :

RAYMOND PHILLIPS, :

Defendant. :

INDICTMENT

77 Cr.

77 CRIM. 0487

-----x
The Grand Jury charges:

On or about the 13th day of April, 1976, in the Southern District of New York, RAYMOND PHILLIPS the defendant, unlawfully, intentionally and knowingly did escape from the Federal Community Treatment Center, New York City, in which institution said defendant had been confined by direction of the Attorney General of the United States by virtue of a conviction under a law of the United States.

(Title 18, United States Code, Section 751(a).)

Robert McLaughlin
FOREMAN

Robert B. Fiske, Jr.
ROBERT B. FISKE, JR.
United States Attorney

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•X

VS.

77 CRIM. 487

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✕

November 1, 30, 1977

**SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. -- 791-1020**

1 rg ss

1A

2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF NEW YORK

4 -----x

5 UNITED STATES OF AMERICA :

6 vs. :

77 Cr. 487

7 RAYMOND PHILLIPS, :

8 Defendant. :

9 -----x

10 New York, New York
11 October 31, 1977 - 11:00 a.m.

12 B e f o r e:

13 HON. LEE P. GAGLIARDI,

14 District Judge

15 Appearances:

16 ROBERT B. FISKE, JR., Esq.
17 United States Attorney for the
18 Southern District of New York
19 DAVID W. O'CONNOR, Esq.
20 Assistant United States Attorney

21 WILLIAM ELLIS, Esq.
22 Attorney for the Defendant
23
24
25



2 THE CLERK: United States against ~~Raymond~~ Phillips.

3 MR. O'CONNOR: Ready for the Government

4 MR. ELLIS: Ready for the defendant.

5 THE COURT: We will call up the jury.

6 MR. ELLIS: Before we do that, could I simply
7 call to the attention of the Court that I made two motions
8 before the previous trial. One was on the question of
9 moving to dismiss the indictment on the grounds of double
10 jeopardy and violation of due process, because under the
11 Fifth Amendment, in that the government had forfeited
12 two-hundred days of good time, and also at the same time
13 proceeding to charge the defendant under this statute. I
14 would like to make that motion again on the assumption
15 that it is made for the record, but I assume that your
16 Honor would rule the same way.

17 THE COURT: I will deny it, yes.

18 MR. ELLIS: May I also assume that on the
19 application that I made to your Honor in reference to,
20 I think it was Rule 609 of the Federal Rules of Evidence,
21 that if Mr. Phillips takes the stand and testifies, he will
22 not be interrogated about any prior conviction.

23 THE COURT: The government indicated that they
24 would not go into it and I assume they will take the same
25 position this time.

2 MR. O'CONNOR: That's correct.

3 THE COURT: All right.

4 MR. ELLIS: A lot of things happened last time --

5 THE COURT: Yes, a lot of things happened last
6 time and I intend to comment about them.

7 MR. ELLIS: May I make a statement so it will
8 be clear for the record that you will rule any question
9 from me to any witness, whether it is the government's or
10 the defendant's witness, that two-hundred days of good
11 time had been forfeited as a result of his leaving the
12 federal prison in April 1976 as an improper question?

13 THE COURT: Yes, I would. I ruled that way
14 before.

15 MR. ELLIS: You would rule that's inadmissible?

16 THE COURT: Yes. I would. I would also expect
17 that we will not get as far afield as we did in the last
18 trial. I gave complete liberty to all questions that
19 were asked all around and I think we should confine ourselves
20 solely to the issues in this case, which is whether or
21 not the defendant was lawfully in custody and whether or
22 not he willingly and intentionally did violate the terms
23 under which he was in custody and that we should not get
24 into the amount of sentence in the state court and the
25 amount of sentence in the federal court. That has nothing

1 rg ss

4

2 to do with the issues in this case. If necessary, if
3 there is no objection, I will control this case so that
4 it will be limited solely to the issues that we have before
5 us.

6 MR. ELLIS: Your Honor, may I assume that when
7 I come to this point, that I will ask your Honor for
8 permission to approach the side bench.

9 THE COURT: I am asking you in your opening
10 not to go into it. It is no part of this case.

11 MR. ELLIS: Again to be more specific, you
12 are asking me not to bring out the fact of the four-year
13 sentence at the time of this conviction.--

14 THE COURT: That's right.

15 MR. ELLIS: Is there anything else, sir?

16 THE COURT: And the fact that he also
17 spent some time in state court as a result of the same
18 incident?

19 MR. ELLIS: I didn't bring that up in the
20 opening statement.

21 THE COURT: I don't know about that, but it
22 certainly doesn't belong in this trial.

23 MR. ELLIS: I assume the defendant is going
24 to take the stand and you would rule accordingly the same
25 way on that, too?

THE COURT: Yes, I would.

MR. ELLIS: Again just so I understand the limits, is there anything else?

MR. O'CONNOR: I have one request, that there be no reference to the previous trial.

THE COURT: Unless --

MR. O'CONNOR: I don't mean if someone is lying, just the fact that there was a previous trial.

THE COURT: Do you have any objection if there is no previous trial? If you want to examine a witness with respect to did you previously on such and such an occasion testify as follows, that's fine.

MR. ELLIS: No. I won't make any mention of the fact there was a mistrial in this case.

THE COURT: All right, the panel will get up here as soon as the elevators can get them up here.

(A jury panel consisting of twelve plus two alternates was duly impaneled and sworn.)

THE COURT: Those of you who are on the panel, we are going to take a short recess so you can be taken into the jury room and see where you will be spending the time when we are not in court between recesses and where you will report after lunch and where you will report the beginning of the following day.

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1 rg ss

2 We will just take a short recess now and then
3 we will have opening statements. One thing I do want
4 to caution you is don't talk about this case at all until
5 you have heard all of the testimony and the law and don't
6 let anybody discuss it with you.

7 All right, we will take a ten-minute recess.

8 (Jury not present.)

9 MR. ELLIS: Your Honor, I gave you requests to
10 charge last time. These are the same as last time, but
11 they have been retyped.

12 THE COURT: All right.

13 (Recess)

14 THE COURT: Before we start this trial, members
15 of the jury, I just thought I might give you a few preliminary
16 instructions.

17 The case will proceed in the following manner:
18 The United States Attorney will make an opening statement.
19 The purpose of an opening statement is to outline in brief
20 form what the testimony is expected to develop through the
21 witnesses that are called. Nothing that counsel say, in
22 their opening statements, during the course of the trial
23 or in their closing statements at the end of the trial, or
24 anything the Court may say in respect to fact-matters
25 may be taken in substitution of the testimony of the witnesses

1 rg ss

7

2 which establish what the facts are. So neither counsel may
3 testify in any way nor is the Court testifying at any time
4 during the trial.

5 In a criminal case the defendant doesn't have
6 to present any evidence at all, but may rely upon the
7 presumption of innocence. It is the burden of the
8 government to establish beyond a reasonable doubt the
9 guilt of the defendant, if there is to be a verdict of
10 guilty.

11 If the defendant does make an opening statement,
12 again it should be merely a brief outline of what is
13 expected to be developed by way of the facts in this case.

14 As far as following the opening statements of
15 counsel, the government will call witnesses. When the
16 government calls a witness, it may examine that witness;
17 that witness may or may not be cross-examined by defense
18 counsel and there may be redirect examination of the witness.
19 The government, when it completes its case by putting on
20 all the witnesses, then the defendant may or may not put
21 on any witnesses. As I said before, there is no burden
22 upon a defendant in a criminal case to do anything.

23 After all the evidence is in in the case, the
24 government will address you in what is called summations,
25 which is merely a review of how the counsel believes the

rg ss

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testimony has developed here and what reasonable inferences they think that you as jurors should draw from what they believe has been the testimony adduced. The defense counsel may step up, and there may or may not be a short rebuttal by government counsel. After that is completed then I will instruct you on the law. During the course of the trial, actually as we start out, I will give you a few instructions, but the bulk of my instructions will be contained at the conclusion of the entire case.

Until you have heard all of my instructions you will not be in a position to decide this case, so don't make up your mind on it until you have heard all of the witnesses, summations of counsel and my charge to you on the law.

During the course of the trial, counsel may raise objections to questions that are put to a witness. When they do that I will have to rule on those questions. They do it by saying "I object," and I will either sustain the objection or overrule it. If I overrule it, the witness will be permitted to answer. If I sustain the objection, the witness will not be permitted to answer and you are not to draw any inferences by reason of the fact the question was asked or the wording of it. The question gains meaning only by virtue of the response to it. Don't keep

1 rg ss

2 track of how many times I rule one way or the other, I
3 am ruling on question of law there and not on questions
4 of fact. You are the sole judges of the facts and I am
5 the judge of the law. I am solely ruling on questions
6 of law as I have said.

7 During the course of the trial you may
8 think that you have seen me make a facial grimace or
9 some tone of my voice in connection with an objection, or
10 even in questions that I may ask, and I am permitted to ask
11 questions. Don't gather anything to it as to how you think
12 I would decide this case. My opinion counts for nothing.
13 I will in every way attempt to conceal from you any
14 opinion I may have as to the witness's credibility or
15 as to the ultimate disposition of this case. You are
16 the tryers of the fact and I am not to have any influence
17 on that, but you must accept the instructions of law that
18 I give to you, whether you agree with them or not.

19 As I have indicated, this is expected to be
20 a case of short duration, probably into tomorrow by reason
21 of the fact that it is 12:30 now. What we will do is
22 we will recess in a short while for lunch, an hour for
23 lunch, we will have a short recess during the middle of the
24 afternoon and then we will go to 4:30, quarter to five,
25 depending on where we stand with respect to a witness.

1 rg ss

2 We are not going to start a witness late in the afternoon
3 and if we are late in the afternoon and a witness is on
4 the stand and we can finish him in a few more minutes or so,
5 we will continue beyond 4:30, quarter to five. That's
6 roughly what we will do. We will start in the morning
7 at 9:30. I will expect all of you to be prompt
8 when we adjourn and when we resume, because we can't
9 start unless all of us are here. So please be prompt
10 when you return. So much for the schedule we will
11 follow.

12 I have my own procedure in connection with how
13 a trial is conducted. Gentlemen, if an objection is
14 to be made, I don't want to hear any argument in front of
15 the jury. You merely object. If there is a particular
16 rule of evidence that's involved, and I rule in what you
17 believe is contrary to what that rule of evidence states,
18 why, merely state the rule and I will look at it. If
19 I require a discussion I will ask you to step up to the
20 bar or if not at the next recess that we have you will be
21 permitted to argue it to me. I don't want jurors to hear
22 any argument of counsel. That's not testimony, so I
23 do hear arguments in the absence of the jury.

24 If we have to recall a witness because I am
25 convinced that I made an erroneous ruling, why, we will

1 ry ss

2 do that.

3 I would expect all of you, both counsel,
4 to remain seated while the jury is filing in and filing
5 out. When a witness is being administered the oath, why,
6 we are all to drop what's going on and pay attention
7 to the administering of the oath.

8 Counsel may run across you either in the
9 entrance to the courthouse or on the way up in the elevator.
10 They are not supposed to talk with you and don't feel that
11 they are ignoring you or anything like that. They are
12 ignoring you because they are doing that pursuant to
13 instructions. There is to be no contact between the
14 jurors and counsel. This is not a personality contest, this
15 is a trial of the issues of fact that are to be determined
16 by the testimony of the witnesses.

17 If any one of you needs and immediate recess
18 or something like that, if you will just let me know
19 right away, we will do what we can to take care of that.

20 One of your most important functions will be
21 to determine the credibility of witnesses. There is no
22 real magic formula about that. You meet people in your
23 every day lives every day. Sometimes you meet a lot of
24 people in the period of a day and in your business relations,
25 your social relations, you observe the demeanor of people,

you see how they impress you by the way they behave, whether or not what they say has the ring of credibility to it and whether or not in a particular case here, whether or not their testimony is either supported or contradicted by other evidence. I will give you further instructions about credibility, but that's going to be one of your main functions here, and as I say, one of the ways of doing that is by observing the demeanor, the way a witness appears, whether he appears to be telling the truth or not, and as I say, it is either supported or contradicted by other testimony.

So much for these preliminary instructions, Mr O'Connor.

MR. CONNOR: Thank you, your Honor.

Your Honor, Mr. Ellis, Ms. Russell, ladies and gentlemen of the jury:

This is a criminal case, as his Honor has told you. It involves escape from the custody of the Attorney General of the United States.

The grand jury has indicted Raymond Phillips and as his Honor has told you, the indictment is not proof, it is just merely a charge, that on April 13, 1976. Raymond Phillips left the custody, escaped from the Federal Community Treatment Center in New York City and that he was in that

rg ss

treatment center by direction of the Attorney General after having been convicted under a law of the United States.

What the government will prove to you in this case is that Raymond Phillips, this man, the defendant, was lawfully in custody on April 13, 1976 at the Federal Community Treatment Center by direction of the Attorney General and that he had been convicted of a crime.

The proof will also show that Phillips voluntarily did not return to the community treatment center on April 13 and he did not return on purpose and, therefore, that he had effected an escape. How long he was in escapee status is irrelevant. However, the proof will show that Mr. Phillips was an escapee for over one year.

On April 14, 1977, he was picked up by the Westchester County Police.

The proof will show that when he was picked up he gave a false name. He said that he was Robert Muller. When he realized that the authorities knew who he was, he then admitted to being Raymond Phillips.

This is going to be a very short case, as his Honor has told you. However, it is an important case. It is important to the defendant, obviously. It is also

important to the United States.

It is my duty, as well as my privilege, to represent the United States of America in this case. People like Raymond Phillips can not just make up the rules as they go along. When he escaped, he escaped on purpose. He never turned himself back in.

He is innocent under our system of justice until the United States proves his guilt beyond a reasonable doubt. I am quite confident that as this case progresses, we shall prove each and every element of the crime of escape beyond a reasonable doubt.

It will be your duty to decide whether or not we have met that burden. It is also your duty to pay attention as closely as possible to the witnesses and to the exhibits that are put into evidence.

It is also your duty to listen to the Judge's charge on the law at the end of the case and then it will be your duty to decide one way or the other whether he is guilty or whether he is innocent. This is a formidable duty, but it is the only way our system of justice will work. You have taken an oath that you will fulfill that duty. If you can not fulfill the duty let his Honor know right now. Don't wait until you are in that juryroom. That's too late.

1 rg ss

2 I will ask you to be as fair as possible
3 to the defendant and to the United States. I expect you
4 to do that because you have taken an oath that you will
5 be fair and I have trust and confidence that the United
6 States will prove this case beyond a reasonable doubt.

7 Thank you.

8 THE COURT: Mr. Ellis.

9 MR. ELLIS: Your Honor, Mr. O'Connor, Ms. Russell
10 and ladies and gentlemen of the jury:

11 My name is Mr. Ellis. I am the attorney who
12 is representing Raymond Phillips.

13 I would like to say that I agree with the
14 remarks that have been made by the Assistant United States
15 Attorney. You have a certain obligation to perform by
16 taking an oath and Raymond Phillips doesn't ask you to do
17 anything except to listen carefully to the witnesses, look
18 at the exhibits, following the instructions of the Court
19 and to be fair.

20 My client doesn't deny that he was lawfully
21 in custody of the Attorney General. He doesn't deny that
22 on or about April 13, 1974, that he left the Federal
23 Community Treatment Center. There is no question concerning
24 that. My client does deny, though, that he intentionally
25 and knowing left the Federal Treatment Center. This is

1 rg ss

2 an extremely simple case but sometimes that which is most
3 simple turns out to be that which is most deceptive. Mr.
4 Phillips will take the stand. He will tell you the circum-
5 stances relating to his leaving the Federal Treatment
6 Center and will simply, in effect, say to you if you consider
7 everything that happened to me I did not knowingly and
8 willingly leave that center. What I did do was I didn't
9 conform to all of the regulations that everyone wanted to
10 put me in, and that's my crime, and only that is my crime.

11 I ask you, as Mr. O'Connor, to listen carefully
12 to all the evidence and then upon summation, after you have
13 heard everyone, including Mr. Phillips, I would like to
14 suggest to you the inferences that can be drawn, and I would
15 like to suggest to you that the inference will be that the
16 government has failed to prove its case beyond a reasonable
17 doubt, and that you should find Mr. Phillips not guilty.

18 Thank you.

19 THE COURT: I think we will break for lunch.
20 There is no sense in putting a witness on now. I know it
21 takes a little bit more than an hour. We don't have that
22 many eating places around here, so if you will be back here
23 by ten minutes to two, that will be fine, and we will resume
24 then.

25 Don't discuss the case with anyone and don't let

1 rg ss

2 anyone discuss it with you. Have a pleasant lunch and
3 report back at ten minutes of two.

4 This is room 2704 and my name is Judge
5 Gagliardi. If you have trouble, somebody will be able
6 to direct you here.

7 (Luncheon recess.)
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rg ss

Walsh-direct

18

AFTERNOON SESSION

2:00 p.m.

(In open court, jury present.)

THE COURT: Call your first witness.

MR. O'CONNOR: The government calls Matthew Walsh.

M A T T H E W W A L S H, called as a witness
by the Government, being first duly sworn,
testified as follows:

DIRECT EXAMINATION

BY MR. O'CONNOR:

Q Mr. Walsh, how are you employed?

A I am employed by the Federal Bureau of
Prisons. I am director of the Community Treatment Center,
New York.

Q Where is that?

A The administration office is located at 201
West 55th Street, New York.

Q How long have you been so employed?

A I have been at that station since September
1974. Three years, approximately.

Q Directing your attention to April 12, 1974,
was a Raymond Phillips incarcerated at the Federal Community
Treatment Center?

1
2 A He was.

3 Q Was that incarceration due to a conviction
4 for violation of a law of the United States?

5 A It was.

6 Q What is the Federal Community Center?

7 A It is an institution operated by the Federal
8 Bureau of Prisons for the purpose of providing a transition
9 between the confines of an institution and the complete
10 freedom in the community.

11 Q I show you Government's Exhibit 1 for identification
12 and ask you if you can identify it.

13 A I can.

14 Q What is it?

15 A It is an order of judgment and commitment in
16 regard to Mr. Raymond Phillips, convicting him of violation
17 of 2312 of the Dyer Act and committing him to the custody
18 of the Attorney General for a period of four years.

19 THE COURT: Any objection to the admission of
20 this document?

21 MR. ELLIS: No, sir, I have no objection.

22 THE COURT: It will be received and marked
23 in evidence.

24 (Government's Exhibit 1 received in evidence.)

25 THE COURT: Show them to Mr. Ellis and see if he

XXXX

rg ss

Walsh-direct

20

has any objection. Then you may show them to him or read them or do whatever you want.

MR. ELLIS: Your Honor, I have no objection to this, except for one phrase. Could I approach the bench?

THE COURT: Yes.

(At the bench.)

MR. ELLIS: Your Honor cautioned me that I was not to go into the question of any other imprisonment and there is this phrase here. Could this phrase be blocked out?

THE COURT: No objection?

MR. O'CONNOR: No objection, except this is the legal document.

THE COURT: All right.

(In open court.)

MR. ELLIS: Your Honor, I have no objection.

THE COURT: Have you looked at the rest?

MR. ELLIS: No, I haven't.

THE COURT: Look at all the rest and then we will put them all in. It will save time going back and forth.

(Pause.)

MR. ELLIS: Your Honor, I do not anticipate any

rg ss Walsh-direct

objection at the time that they are offered in evidence.

THE COURT: Very well. Why don't you just mark them in then.

MR. O'CONNOR: I am going to ask him to identify them.

THE COURT: All right.

Q Will you identify Government's Exhibit 2 for identification, Mr. Walsh?

A Yes.

Q What is it?

A It is a transfer order directing the transfer of Mr. Raymond Phillips from FCI -- from the Federal Correctional Institution at Danbury to the Federal Treatment Center in New York

Q Can you identify Government's Exhibit 3 for identification?

A I can. It is a receipt signed by Mr. Phillips and witnessed by an officer at the Community Treatment Center acknowledging that he did in fact receive a copy of the rules and regulations of that center.

Q Could you identify Government's Exhibit 4?

A Yes. That's a form wherein Mr. Raymond Phillips acknowledged that he was aware of the penalties for escape from the Community Treatment Center and for illegal

1 rg ss

Walsh-direct

22

2 possession of knives, guns and weapons. He acknowledged
3 receipt of that.

4 MR. O'CONNOR. The Government offers Exhibits
5 1, 2, 3, and 4 into evidence, your Honor.

6 MR. ELLIS: No objection.

7 THE COURT: If there is no objection, they
8 will be received.

9 (Government's Exhibit 1, 2, 3, and 4 received
10 in evidence.)

11 Q Can you identify Government's Exhibit 5 for
12 identification?

13 A Yes. It is a request for interview form.

14 Q Are these records kept in the regular course
15 of business of the Bureau of Prisons?

16 A They are.

17 THE COURT: They are already in evidence so
18 I don't think we need that.

19 MR. O'CONNOR: All right, fine, your Honor.

20 Q Directing your attention to April 13, 1976,
21 under the rules of the Bureau of Prisons was Mr. Raymond
22 Phillips obligated by those rules to be in your Federal
23 Community Treatment Center by 1:00 a.m. of the 13th?

24 A He was.

25 Q Did he so return as required?

1 rg ss

Walsh-direct-cross

2 A He did not.

3 Q Did he ever return on his own to your institution?

4 A After that point?

5 Q Yes.

6 A He did not.

7 MR. O'CONNOR: Thank you, that is all.

8 CROSS-EXAMINATION

9 BY MR. ELIAS:

10 Q Mr. Walsh, according to your testimony you
11 have been the director of the Federal Community Treatment
12 Center since September of 1974, is that correct?

13 A That's correct.

14 Q Do you yourself know the defendant Raymond
15 Phillips?

16 A No.

17 Q Personally?

18 A No.

19 Q Have you, during the time that you have been
20 director there and during the time that Mr. Phillips
21 was there, did you ever see him?

22 A No.

23 Q Then you yourself have no direct knowledge of
24 anything relating to Mr. Phillips, is that correct?

25 MR. O'CONNOR: Objection.

THE COURT: I will permit it.

A Correct.

Q The documents which you have identified are official documents from your Community Center, is that correct?

A Correct.

Q And you are in charge of those documents and you have brought them here to court, is that correct?

A Yes, those are copies.

Q But in reference to Exhibit No. 3, which has been received in evidence, you yourself were not present when Mr. Phillips signed that exhibit, were you?

A I was not.

Q Thank you.

So you do not know what took place at the time of the signing of the exhibit. You only know that it is a part of the file relating to Mr. Phillips, is that correct?

A That's correct.

Q In reference to Exhibit No. 4, you were not present when Mr. Phillips signed that, were you?

A I was not.

Q You do not know what took place at the time that he signed it, is that correct?

1 rg ss

Walsh-cross

2 Q And this also is a part of the official file
3 relating to your Center?

4 A That's true.

5 Q Mr. Walsh, do you have a custom, after a man
6 is received at your Center, of having him leave for weekends?

7 A That procedure --

8 MR. O'CONNOR: Objection.

9 THE COURT: Yes, sustained.

10 Q Is it the custom at your Center to permit
11 prisoners who are there to leave for weekends?

12 MR. O' CONNOR: Objection.

13 THE COURT: Yes, sustained.

14 MR. ELLIS: Your Honor, may I --

15 THE COURT: I don't think it is necessary, no,
16 sir.

17 Q How many floors are there at the Federal Center,
18 Mr. Walsh?

19 MR. O'CONNOR: Objection.

20 THE COURT: I will sustain the objection.

21 Q Are you acquainted with the facilities of
22 your Center, Mr. Walsh?

23 MR. O'CONNOR: Objection.

24 THE COURT: Yes, sustained.

25 MR. ELLIS: Your Honor, could I approach the bench?

1 rg ss

Walsh-cross

26

Lenci-direct

2 THE COURT: No, I don't think so. Proceed.

3 Rules 403 and 611.

4 MR. ELLIS: May I approach the bench for
5 the purpose of making an offer of proof?

6 THE COURT: This witness will be available.
7 He will be recalled if necessary. We will do that at
8 the next recess.

9 MR. ELLIS: Very good, your Honor.

10 Your Honor, we have no further testimony
11 at this time subject to our offer of proof.

12 THE COURT: Any redirect?

13 MR. O'CONNOR: No, your Honor.

14 THE COURT: You may be excused, but would you
15 remain in the witness room.

16 (Witness excused.)

17 THE COURT: Who is your next witness?

18 MR. O'CONNOR: The government calls Vincent
19 Lenci.

20 V I N C E N T L E N C I, called as a witness

21 by the Government, being first duly sworn,

22 testified as follows:

23 DIRECT EXAMINATION

24 BY MR. O'CONNOR:

25 Q Mr. Lenci, how are you employed?

1 rg ss Lenci-direct

2 A By the Westchester County Parkway Police.

3 Q How long have you been so employed?

4 A A little over five years.

5 Q Directing your attention to April 14, 1977,

6 did you have occasion to make the acquaintance of a

7 person who identified himself as Robert Muller?

8 A Yes, I did.

9 Q Do you see that person in this courtroom?

10 A Yes. The cleanshaven gentlemen at the desk
11 here.

12 THE COURT: Do you concede identification of
13 the defendant as that person?

14 MR. ELLIS: I will concede the identification,
15 your Honor.

16 THE COURT: Very well.

17 Q In your own words, Mr. Lenci, would you please
18 describe the circumstances leading up to and surrounding
19 your meeting the defendant?

20 A At about --

21 MR. ELLIS: Objection, on the grounds it is
22 not relevant. He admits he saw this person.

23 THE COURT: I will permit a little bit of it.
24 I would think if you go question by question it will be
25 better.

1
2 A Well, at about 3:05 in the morning I had occasion
3 to observe a vehicle on the side of the road with its flash-
4 ing lights on. I pulled over to ascertain the problem,
5 to tell him to turn his lights off and to roll it back
6 into a safe area. The person sleeping in that car
7 at that time was a fellow that later identified himself
8 to me as Robert Muller.

9 THE COURT: Just give us the circumstances
10 with respect to that.

11 You say the car on the side of the road with flash-
12 ing lights... You went up to the car, did you?

13 THE WITNESS: Yes, I did.

14 THE COURT: What did you do when you got to
15 the car?

16 THE WITNESS: Well, myself and another officer, we
17 just told him to put the flashing lights out and to roll it
18 back a little ways, a little further off the pavement.

19 THE COURT: All right.

20 THE WITNESS: We called in the plate and
21 proceeded on our way, we left.

22 Q Did you eventually take this man into custody?

23 A Yes, I did.

24 Q At that time did he ever identify himself to
25 you as anything other than Robert Muller?

1 rg ss

Lenci-direct-cross

2 MR. ELLIS: Objection, your Honor.

3 THE COURT: Yes.

4 MR. ELLIS: May I move to strike the previous
5 answer that was given by the witness?

6 THE COURT: No. Did there come a time when
7 you approached the person in the car and did you have
8 any conversation with him with respect to his name?
9 That hadn't been established.

10 MR. O'CONNOR: Thank you, your Honor.

11 THE COURT: Did there ever come a time when
12 you approached the gentlemen in the car and asked him
13 what his name was?

14 THE WITNESS: Yes.

15 Q What did he give you as his name?

16 A Robert Muller.

17 MR. O'CONNOR: Thank you. ...

18 CROSS-EXAMINATION

19 BY MR. ELLIS:

20 Q Mr. Lenci, did you ask the defendant to produce
21 any of his belongings, his wallet or any personal belongings
22 at that time on that evening?

23 A I asked him for any ID he might have.

24 Q Did he produce any ID?

25 A No, he had no ID.

MR. ELLIS: Your Honor, may I request that the government be directed by your Honor to produce any personal belongs that are being held by the prison system that were on the defendant at the time that he was apprehended?

MR. O'CONNOR: Your Honor, we have no control over that at this moment, it would take a long time, plus he had all the weeks. He knew what the testimony was going to be. It is irreleveant also.

THE COURT: All right. Do you have any further questions of this witness?

You didn't ask him for identification?

THE WITNESS: I did.

THE COURT: I mean, he did not produce any?

THE WITNESS: He did not produce any identification.

THE COURT: Very well.

MR. ELLIS: I am simply asking that the documents that were taken be produced.

THE COURT: We haven't gotten to any documents yet. Anything further with this witness?

MR. ELLIS: Once second, your Honor.

(Pause)

MR. ELLIS: Your Honor, I have no further questions.

REDIRECT EXAMINATION

BY MR. O'CONNOR:

Q Did there ever come a time when you searched the defendant for documents or any sort of proof?

A From the defendant I got no documentation of any other name except for the one that was given to me by him.

THE COURT: Anything further?

RECROSS-EXAMINATION

BY MR. ELLIS:

Q Did you at the time ask him for his wallet or any identification?

A Yes, I did. I asked him for it.

Q What did he do?

A He didn't have any to give me. He didn't produce any to me. I took it only on a verbal word of mouth.

MR. ELLIS: I have no further questions.

(Witness is excused.)

THE COURT: Next witness.

MR. O'CONNOR: The government calls Peter Ringler.

MR. ELLIS: May I ask that Mr. Lenci be held for the rest of the afternoon?

THE COURT: Yes.

Jimmy, would you ask that last witness to remain available in the courthouse.

P E T E R R I N G L E R, called as a witness
by the Government, being first duly sworn,
testified as follows:

DIRECT EXAMINATION

BY MR. O'CONNOR:

THE WITNESS: Westchester County Parkway Police,
Hawthorne, New York.

Q How are you employed, Mr. Ringler?

A I am employed as a police officer by the County
of Westchester.

Q How long have you been so employed?

A 23 years.

Q Directing your attention to April 14, 1977,
did you have an occasion to meet a man who was introduced
to you as Robert Muller?

A Yes, sir.

Q Do you see him in this courtroom?

A Yes, sir.

Q Would you point him out.

A The gentleman attired with the shirt open
at the collar and the glasses and the light hair.

THE COURT: Identification conceded?

MR. ELLIS: Identification conceded, your Honor.

THE COURT: All right.

Q Did you have occasion to have a conversation with that man?

A Yes, sir.

Q Could you tell us what that conversation consisted of?

A I was interviewing the gentleman to find out his identity and I asked him what his true identity was and he asked for a piece of paper and pencil, on which he wrote the name Raymond Phillips.

He then removed his false teeth, the upper plate, and copied a number, which was his inmate's number from the teeth on this piece of paper.

MR. O'CONNOR: Thank you, that's all.

CROSS-EXAMINATION

BY MR. ELLIS:

Q I have no questions of this witness, your Honor.

THE COURT: You may step down.

(Witness excused.)

THE COURT: Next witness.

MR. O'CONNOR: The government calls Julian Perez.

1 rg ss

Perez-direct

2 J U L I A N P E R E Z, called as a witness

3 by the Government, being first duly sworn,

4 testified as follows:

5 DIRECT EXAMINATION

6 BY MR. O'CONNOR:

7 Q Mr. Perez, how are you employed?

8 A I am a Special Agent with the Federal Bureau
9 of Investigation.

10 Q How long have you been so employed?

11 A Approximately eight years.

12 Q Directing your attention to April 14, 1977,
13 did you have occasion to make the acquaintance of one
14 Raymond Phillips?

15 A Yes, I did.

16 Q And do you see him in this courtroom?

17 A Yes, I do.

18 Q Can you point him out?

19 A The gentleman there with the glasses and the
20 light colored shirt.

21 MR. ELLIS: Identification is conceded, your
22 Honor.

23 THE COURT: Very well.

24 Q At what time of the day did you make the
25 acquaintance of Mr. Phillips?

1 rg ss

Perez-direct-cross

2 A It was approximately 4:57 p.m. that day.

3 Q Did you have any conversation at all that day
4 with Mr. Phillips?

5 A Yes, I did.

6 Q Would you please tell the Court and jury
7 what if anything Raymond Phillips said to you and what you
8 said to him?

9 A Well, first of all I advised him of his constitu-
10 tional rights. I advised him he had a right to remain silent;
11 that anything he said could be used against him in a court
12 of law; that he had a right to an attorney if he decided
13 to answer any questions and if he couldn't afford an
14 attorney, the Court would appoint one for him.

15 I then asked him his identity and he said
16 he was Raymond Phillips.

17 I asked him why he had left the Federal
18 Community Treatment Center. He said that he had left
19 because it was just a hassle.

20 I asked him if he had planned to return to
21 the Center and he said he had no intention of returning.

22 MR. O'CONNOR: Thank you, that's all.

23 CROSS-EXAMINATION

24 BY MR. ELLIS:

25 Q Mr. Perez, Mr. Phillips told you that his name

was Raymond Phillips, is that correct?

A I asked him, "Are you Raymond Phillips?" He said, "Yes, yes."

Q You asked him why he left the Center and he said "too much hassle." Is that the answer he gave?

A Yes, hassle, definitely.

Q Did you ask him anything more about what he meant by hassle?

A No, sir.

Q That's all that he said to you, namely, "too much hassle"?

A That's correct.

MR. ELLIS: I have no further questions, your Honor.

THE COURT: All right, anything further?

MR. O'CONNOR: The government rests.

THE COURT: You may step down.

(Witness excused.)

THE COURT: Members of the jury, that means the government has completed its direct case. We will take a short recess. Return to the juryroom.

(Jury not present.)

THE COURT: All right, Mr. Ellis, with respect to the two witnesses that you asked to remain, go ahead.

1 rg ss

2 MR. ELLIS: I am sorry, the one I am primarily
3 concerned about, and I don't think that I wish to question
4 Mr. Lenci any further, but I thought perhaps --

5 THE COURT: Could we relieve Mr. Lenci?

6 MR. O'CONNOR: I would just as soon hold
7 him.

8 THE COURT: All right.

9 MR. ELLIS: With reference to Mr. Walsh, may I
10 say that I would like to make an offer of proof at this
11 time, your Honor.

12 THE COURT: Yes.

13 MR. ELLIS: My offer of proof relates to the
14 customs at the Treatment Center with which I think that he
15 is familiar. I am talking, one, about the practice of
16 permitting men to leave on the weekend and also whether
17 there is any policy to encourage the men to leave on the
18 weekend. I am talking also about the practice of having
19 men who live on one floor and who don't leave for the
20 weekend, because it is administratively convenient for the
21 Treatment Center, to have those men who stay there for
22 the weekend moved to another floor and to other facilities.
23 And in order to avoid this kind of movement and to avoid
24 an inconvenience to the agency, they in turn encourage these
25 men to leave for the weekend, whether they wish to leave or no

1 rg ss

2 The reason why I would like to offer this, your Honor,
3 is because this goes to the question of too much hassle
4 that my client was talking about. I would suggest
5 to your Honor that it is relevant in terms of the limitations
6 that I have imposed upon it and I would respectfully request
7 that I be permitted to interrogate the witness.

8 THE COURT: Mr. O'Connor, what do you have
9 to say?

10 MR. O'CONNOR: Any testimony as to the Federal
11 Community Treatment Centers is irrelevant. I mean,
12 it is an institution authorized by the Attorney General
13 and that's all that we had to prove. It is the same as
14 any other prison. There are hundreds of cases supporting
15 that proposition. If the defendant's defense is that, it
16 is just a hassle, he can call witnesses to try and prove
17 it is a hassle. I would assume that it would be irrelevant,
18 your Honor.

19 MR. ELLIS: Let me state that the defendant
20 himself is going to take the stand, and of course he is going
21 to testify to this, but I would like to indicate just what
22 the custom is as to the question of intent that the government
23 has to prove.

24 MR. O'CONNOR: Your Honor, I have one further
25 point, however, just to finish it up, that any conversation

1 rg ss

2 about the weekends I am going to be continuously
3 objecting to mainly because the date in question in this
4 case was not a weekend and therefore is totally irrelevant.

5 THE COURT: As I view it, and we have had
6 the benefit of a previous trial in this case -- I shouldn't
7 say the benefit; we have had a previous trial in this case.
8 Much of what you request to go into now was not objected
9 to on the previous trial. I think the sole issues in
10 this case are did he have a leave, was he supposed to
11 return on a certain day, did he in fact return when directed
12 and I assume that the government proof goes to establish,
13 one, that he was permitted to leave on a certain day and that
14 he was directed to return by a certain day and he did
15 not return until he was brought back a year later.

16 Now, this question of what the procedure is
17 on weekends and what is on this floor and on the other floor
18 may very well -- and the fact that it is a hassle may
19 very well go to his motive, but it does not go to his
20 intent and, in my opinion, is not relevant at all on the
21 issues of whether or not he was an escapee from the
22 Federal Community Treatment Center here in New York.

23 MR. ELLIS: Your Honor, I would like to suggest
24 that his state of mind at the time at which he fails to
25 return does have some relevance as to the question of

rg ss

46

intentionally and knowingly.

THE COURT: It certainly may, his state of mind.. That may be his motive for not returning, which is not the same as intention. As I charged the jury in the last case -- not initially, but when they came back for instructions, I charged them on proof of motive because : evidently they had mixed up motive and intent and it was my fault for not charging them motive.

MR. O'CONNOR: I would also like to state for the record that two weeks ago in, I think it was the middle district of Tennessee, James Earl Ray was prosecuted for an escape case. When the defense tried to establish his intent for leaving as being that he wanted to open up the Martin Luther King case, the Judge correctly ruled, I believe, that that was all irrelevant because it might have established motive, exactly what you just stated, and therefore all that proof was not admitted into evidence.

THE COURT: I wanted to give you the opportunity to argue this but it is my opinion that it is not admissible, but I want the witness available so he would be available for that.

What the defendant testifies to in connection with that, we will take each question as it goes along, but so far as the procedure, what goes on on one floor or

1 rg ss

2 the other, the conditions may be deplorable, they may not
3 be, but that does not go to the question of intent and
4 things like that.

5 I think that that's the correct view of the law
6 as I see it and I think under the rules 403 and 611 of the
7 Rules of Evidence, that this is completely inadmissible.

8 MR. ELLIS: Well, then, your Honor --

9 THE COURT: The government has rested.

10 MR. ELLIS: In view of that ruling, may I
11 respectfully move for a judgment of acquittal on the ground
12 that the government has failed to meet its burden at
13 this point by presenting a prima facie case?

14 THE COURT: In what respect? They proved
15 the conviction.

16 MR. ELLIS: Yes.

17 THE COURT: They proved the custody of of the
18 Attorney General.

19 MR. ELLIS: They proved that.

20 THE COURT: They proved that he left the institution
21 under certain conditions, that he was directed to return
22 and that he has failed to return.

23 MR. ELLIS: I would like to suggest --

24 THE COURT: And they also have circumstantially
25 proved intent through the testimony of the two police officers,

1 rg ss

2 one who says he gave him a name which is some evidence
3 in the charge as I gave it to you, as well as the fact
4 that he told the last witness, Sergeant Perez, that he
5 left and never intended to return. I think that's a
6 prima facie case and under those circumstances I
7 would deny your motion with an exception.

8 MR. ELLIS: Thank you, your Honor.

9 THE COURT: ... Someway or another before
10 it gets into the jury we are going to have to block out --
11 and whatever you do, if you want to do it, you can take that
12 exhibit and if it is agreeable with both sides, put a piece
13 of paper over that part that you want excluded, make a
14 xerox copy with the excluded portion there and substitute
15 that as our exhibit rather than this one. I think that's
16 the way to do it.

17 MR. ELLIS: Yes.

18 MR. O'CONNOR: Since this is a copy itself,
19 it is just as easy just to block it out entirely right
20 on this copy. We have the original anyway.

21 THE COURT: I hate to see something blocked
22 out like that.

23 My thought is the jury always goes to try to find
24 out what's underneath and it would be so easy in this case
25 to do it. It is not going to go to the jury yet and we will

1 rg ss

2 have time to do it.

3 MR. ELLIS: May I make one other request?

4 Before Mr. Walsh leaves, can we have the exhibit that was
5 offered in evidence at the last trial that involved
6 the rules and regulations that were handed to --

7 THE COURT: Do you have them handy?

8 MR. O'CONNOR: I am not sure I brought it.
9 I didn't intend to introduce it.

10 MR. ELLIS: I am not saying I am going to intro-
11 duce it, but could I have it?

12 MR. O'CONNOR: I have it.

13 THE COURT: All right.

14 Are we ready to proceed?

15 MR. ELLIS: Yes.

16 THE COURT: All right, if the defendant doesn't
17 require anybody, we will release the witnesses.

18 MR. O'CONNOR: Is it your intent to wait
19 until tomorrow to charge the jury and then the jury
20 won't start deliberating until then? I am trying to
21 think about terms of getting it xeroxed.

22 THE COURT: Don't worry about that, because
23 it won't be shown to the jury until they ask for it. I
24 have a xerox machine on my floor.

25 (Pause.)

rg ss

Phillips-direct

THE COURT: Are we ready?

MR. ELLIS: The defendant is ready, your Honor.

THE COURT: All right, bring the jury in, please.
(Jury present.)

THE COURT: Mr. Ellis?

MR. ELLIS: Your Honor, the defedant Raymond Phillips wishes to take the stand and testify in his own behalf.

RAYMOND PHILLIPS, the defendant,
called as a witness in his own behalf, being first
duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. ELLIS:

Q Mr. Phillips, there came a time when you were imprisoned at the federal prison at Danbury, is that correct?

A Yes, there was.

Q Did there come a time when you were asked whether you wished to go from Danbury to the Federal Treatment Center in New York City?

A There was.

Q How many times were you asked this question?

A Three times.

rg ss

Phillips-direct

Q What was your answer each occasion?

A Being I wasn't eligible for parole, I didn't want to go to no halfway house, I wanted to finish up in Danbury.

Q Did there come a time when you were directed against your will to go to the Federal Community Treatment Center in New York City?

A On March the 12th, 1976, Mr. Pfuntner ordered me to leave Danbury Monday morning and go to the halfway house in New York City.

Q Did you go that halfway house?

A I went to the halfway house.

Q Did you become an inmate at that halfway house?

A I don't know if they call them inmates. There they call them residents because you are at liberty.

Q What day did you say you arrived?

A March 15.

Q March 15.

A 1976.

Q When you arrived were you given what has been received in evidence as Government's Exhibit 3?

A Yes.

Q Is that your signature?

A Yes, it is.

1 rg ss Phillips-direct

2 Q According to this exhibit, there is a reference
3 to the rules and regulations of the Center. Did you
4 ever receive a copy of those rules and regulations?

5 A No. No rules and regulations were ever
6 given out.

7 Q I show what has been received into evidence as
8 Government's Exhibit 4. Is that your signature?

9 A Yes, it is.

10 Q Was that read to you?

11 A No. They give you all these papers because
12 they want you to go out for the remainder of the day once
13 you get to the halfway house.

14 THE COURT: No.

15 Q Did you read these?

16 A No.

17 Q Did you sign them?

18 A Yes.

19 Q Did anyone tell you what they were?

20 A No. It is a blanket thing. They throw papers.

21 Q Did you procure a job while you were there
22 at the Center?

23 A Yes, I did.

24 Q Where did you work?

-25 A Bigelow Pharmacy on Sixth Avenue and 8th Street.

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rg ss

Phillips-direct

47

Q What were your hours?

A From four in the afternoon to midnight.

Q What did you do?

A I worked in the luncheonette department of the pharmacy. Short order, sodas, so forth and so on.

Q Did you go unescorted to the drugstore?

A Oh, yes.

Q What time would you go?

A Somewheres around 11:00 in the morning I leave the halfway house.

Q How long would you work during the day?

A Well, I had to be at work at 4:00 and I quit somewhere around 11:30.

Q Were you unescorted during the time that you were working?

A All the time.

Q Then you would return to the Center, is that correct?

A Right.

Q How much were you earning during this period?

A \$75 a week for the salary and about \$15 a day -- ten or fifteen dollars a day in tips.

Q Do you recall what you did on the first weekend that you were at the treatment center?

1 rg ss

Phillips-direct

2 MR. O'CONNOR: Objection.

3 THE COURT: I will permit it.

4 A I stayed in the halfway house.

5 Q Did you have any conversation with any official
6 at the treatment center during that first weekend?

7 A No, sir. Not during that weekend.

8 Q During that first week on what floor did you
9 sleep?

10 MR. O'CONNOR: Objection.

11 THE COURT: Yes, sustained.

12 Q Were your facilities during the week and weekend
13 the same, Mr. Phillips?

14 MR. O'CONNOR: Objection.

15 THE COURT: Sustained.

16 Q Mr. Phillips, do you recall what you did during
17 the second weekend?

18 A Yes. I again stayed at the Center.

19 Q Did you have a conversation with any official
20 at the Center concerning that weekend?

21 A No. Not that one.

22 Q Do you recall what you did the third weekend?

23 A Yes, I do.

24 Q What did you do?

25 A Mr. Moody, who was my counselor, told me I had

1 rg ss Phillips-direct

2 to find a place to stay for the weekend. I didn't have
3 none, so I went to work.

4 MR. O'CONNOR: Objection.

5 THE COURT: I will permit it.

6 Q What did you do that weekend?

7 A Well, I happened to remember, because it was
8 my birthday, so Saturday we had a little birthday party. I
9 went to a Chinese restaurant, the movies and so forth and
10 so on. Sunday I went to work to pay for what I spent on
11 Saturday.

12 Q But did you leave the Center on that third
13 weekend?

14 A Not to stay out overnight.

15 Q During the fourth weekend, do you recall what
16 you did on that weekend?

17 A Yes, I do.

18 Q Did you have a conversation with any prison
19 official concerning that weekend?

20 A Yes, I did. He told me I had to find a place
21 to stay for the weekend.

22 THE COURT: Who was it that you had this
23 conversation with?

24 THE DEFENDANT: Mr. Moody, who was my counselor
25 at that halfway house. He told me I had to find a place to

rg ss Phillips-direct

stay. So on April --

Q What did you say to him?

A I told him I just didn't have no place. He said "Well, we got places for you. We can send you back to Danbury."

So I found a place all of a sudden to stay for the weekend.

MR. O'CONNOR: Objection, your Honor.

THE COURT: I will permit it.

Q I show Defendant's Exhibit A.

MR. ELLIS: Your Honor, may this be marked as Defendant's Exhibit A?

THE COURT: Show it to counsel.

MR. O'CONNOR: I am going to object, your Honor.

THE COURT: Let me see it, please.

Is it marked for identification?

MR. ELLIS: It has been marked for identification, your Honor.

THE COURT: I will receive it.

(Defendant's Exhibit A received in evidence.)

Q Mr. Phillips, I show what has been admitted in evidence as Defendant's Exhibit A. I ask you if you can tell us what that is?

A This is a request to stay out for the weekend.

1 rg ss Phillips-direct

2 Q What weekend?

3 A The 11th through the 13th.

4 Q Was that of April?

5 A No, from the 9th to the 11th rather.

6 Q Of what month?

7 A April 1976.

8 Q Who made up the request?

9 A I did.

10 Q Was that the fourth weekend that you
11 were at the Center?

12 A Yes, sir.

13 Q Would you tell us briefly whom you stated you
14 wanted to visit on that weekend?

15 A The name is Frank Elwood.

16 Q Who was Frank Elwood?

17 A The boss at the place I worked.

18 Q Where did he live?

19 A 324 West 84th Street.

20 Q Did you have a conversation with Mr. Elwood
21 pursuant to that weekend?

22 A Yes.

23 Q Did you have authorization to use his name on
24 this request?

25 A Yes, I did.

1 rg ss Phillips-direct

2 Q Would you tell the jury what you did on Friday
3 afternoon of that weekend.

4 A Well, Friday, I had to work till, you know,
5 midnight.

6 Q And then what did you do?

7 A Rented a room at the YMCA on 9th Street in Brooklyn

8 Q What day did you do that, Friday or Saturday
9 of that weekend?

10 A Well, it was early Saturday morning by the
11 time I got there.

12 Q Where did you stay that weekend?

13 A At the YMCA on 9th Street in Brooklyn.

14 Q What did you do on Saturday?

15 A Well, they ask you to leave a telephone number
16 where you can be reached for the weekend.

17 Q And did you leave a telephone number?

18 A I called up Mr. Moody and gave him a number,
19 to a telephone in the park on 84th and Riverside Drive.

20 Q Where were you at 9 o'clock that Saturday
21 morning?

22 A Sitting there by the telephone.

23 Q In the park?

24 A In the park.

25 Q At 9 o'clock was there a phone call?

1 rg ss

Phillips-direct

2 A Well, you know, right around the 9 o'clock
3 main store enough they called up.

4 Q That number that you had given them?

5 A Right.

6 Q Did you answer the phone?

7 A I answered the phone.

8 Q And did you have a conversation?

9 A Just with the officer there and he says, "Is
10 this Phillips?" I said, "Yes."

11 He said, "Okay, verified," and he hung up the
12 receiver.

13 Q That was a pay telephone, is that correct?

14 A Yes.

15 Q In a public park?

16 A Right.

17 Q Were you supposed to give them the
18 telephone number of where you were staying?

19 A Yes.

20 Q Did there come a time when you returned to the
21 Center?

22 A Yes, I did.

23 Q When did you return to the Center?

24 A About five minutes to ten on Sunday night.

25 Q Then what happened the next day? Did you go to

work?

A Well, they told me to see Mr. Moody before I went to work, so I had to go over and see Mr. Moody.

Q Where did you see Mr. Moody?

A Well, it is one block away. It is another hotel. The Woodward Hotel.

Q Was he one of the officials at that Center?

A He was the case manager or case worker that I had.

Q Did you have a conversation with him?

A Yes, I did.

Q Would you tell us what the conversation was?

A He told me I was a wise guy for giving the telephone number that I gave and I explained why I did it.

Q What did you say to him?

A I told him "You are making us go out for the weekends. You made us go out the first day I was here, so if I go out I got to find a place to live. If I don't go out you are going to send me back to Danbury, so either way I am wrong."

Q What happened then?

A He told me the next time I told him a lie about where I was staying on the weekend he was going to send me back to Danbury.

rg ss

Phillips-direct

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Q Then what happened? What did you do that day?

A I went to work. I went on to work.

Q And then what did you do?

A That night I returned.

Q And then?

A I went to work the next day and I didn't

return.

Q Did you hear the testimony of Special Agent
Perez?

A Yes, I did.

Q Did you hear him use the phrase "too much hassle"?

A Yes, I did.

Q By too much hassle are you referring to what
you just testified to?A Yes, because when you go in there they teach you
to lie and --

THE COURT: The answer is yes, that's all.

Q I'm sorry, would you just answer it yes or no?

A Yes.

Q Did you hear the testimony of the Sergeant
who testified, Sergeant Peter Ringler of the Westchester
County Parkway Police?

A Yes, I did.

Q When you saw Sergeant Ringler, did you identify

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rg ss

Phillips-direct

56

yourself as Mr. Phillips?

A Yes, I did.

Q When you saw Special Agent Perez did you identify yourself as Mr. Phillips?

A Yes, I did.

Q When you saw Officer Lenci, did you identify yourself as Raymond Phillips?

A Yes, I did.

Q What identification did you have on you at the time?

A I had a wallet with a driver's license, a social security card, some pictures and some money.

Q Under what names?

A All under my own name.

Q Raymond Phillips?

A Right.

Q Where is that identification at the present time?

A In FCI Danbury.

Q Do you recall that officer Lenci stated that you used the name Robert Muller? Do you recall his testimony?

A I heard him say that I used a name other than myself. I believe it was Robert Muller or Muller or Miller or something.

Q Did you use that name?

1 rg ss

Phillips-direct

2 A No, I didn't. I don't know who the name
3 belongs to.

4 Q After you left the Center in April of 1976
5 did you ever call the Center?

6 A Yes, about three days afterwards.

7 Q Did you have a conversation?

8 A Yes, I did.

9 Q With who?

10 A Mr. Moody.

11 MR. O'CONNOR: Objection.

12 THE COURT: I will permit it so far, but what's
13 the next question?

14 Q Would you tell us what that conversation was?

15 A Yes. I told him that I would like to be re-
16 turned to either the halfway house or Danbury. He told me
17 to contact the FBI.

18 Q What did you do?

19 A I didn't do nothing. I hung up the phone.

20 Q Did you ever turn yourself in?

21 A No, I didn't.

22 MR. ELLIS: Your Honor, I have no further
23 questions of the defendant.

24 THE COURT: All right.

25 MR. ELLIS: Your Honor, could I ask one

1 rg ss

Phillips-direct-cross

2 question?

3 THE COURT: Certainly.

4 MR. ELLIS: I would request of the Court
5 permission to enter into evidence this document.

6 THE COURT: Show it to counsel.

7 MR. O'CONNOR: I have no objection.

8 THE COURT: All right. Received in evidence.

9 (Defendant's Exhibit B received in evidence.)

10 CROSS-EXAMINATION

11 BY MR. O'CONNOR:

12 Q Mr. Phillips, I show Defendant's Exhibit A
13 in evidence. That's your signature, Raymond Phillips,
14 there?

15 A Yes, it is.

16 Q I show you Government's Exhibit 5 for identification.
17 That's your signature there, Raymond Phillips?

18 A I don't believe so.

19 Q That is not the same signature?

20 A That I don't believe -- no.

21 Q It is not your signature, is that your
22 testimony?

23 A That's my testimony.

24 THE COURT: I have got Exhibit 5 as being received
25 in evidence.

MR. O'CONNOR: It hasn't been received.

I am going to offer it now. I just had it identified. Now I am going to offer it into evidence as a business record.

THE COURT: Any objections?

MR. ELLIS: I am sorry --

THE COURT: He said it was not his signature.

MR. ELLIS: Then I would object, your Honor.

MR. O'CONNOR: It has already been identified by Mr. Walsh as a business record of the Bureau of Prisons and I am offering it now. It has been properly identified as a business record.

THE COURT: On the basis of the business records rule, it will be received in evidence.

(Government's Exhibit 5 received in evidence.)

Q Is it still your testimony, Mr. Phillips, that at no point did you ever ask to be transferred to the Federal Community Treatment Center?

A Yes.

Q I show Government's Exhibit 5 in evidence, identified by Mr. Walsh as being part of your personal file for the Bureau of Prisons and ask you once again is that not your signature?

A That is not my signature.

Q What is this, Mr. Phillips?

A This is a request made out in the Federal Correctional Institution, Danbury, Connecticut, request for an interview. It states that I asked a Mr. Miller for consideration for transfer to CTC for purposes of obtaining employment and residency permanently.

Q Did you fill out this request, Mr. Phillips?

A I did not.

Q You never requested this Mr. Phillips?

A No.

Q This is not your signature?

A No.

MR. O'CONNOR: I am going to show to the jury Government's Exhibit 5 in evidence --

THE COURT: Mr. Matteries will pass it to the jury.

MR. O'CONNOR: The first one has the signature of Raymond Phillips --

THE COURT: It speaks for itself.

MR. O'CONNOR: I am also going to ask that Defendant's Exhibit A be passed to the jury which has been admitted by the defendant to being his signature and I am going to ask you to compare the two signatures.

(Defendant's Exhibit A and Government's Exhibit 5 handed to the jury.)

1 rg ss

Phillips-cross

2 Q Mr. Phillips, on the morning of April 13,
3 1976, did you know you were supposed to be back to the
4 TC by one o'clock in the morning?

5 A Yes.

6 Q Did you ever so return to the FCTC on the 13th?
7 After 1:00 a.m. on the 13th did you ever return to the FCTC?

8 A No.

9 Q Did you ever return at any time since then?

10 A No, I haven't.

11 Q Did you ever turn yourself into the FBI after
12 April 13, 1976?

13 A I made one phone call, that was it.

14 Q Did you ever turn yourself into the FBI after
15 April 13, 1976?

16 A No.

17 Q Did you tell agent Perez that you never had
18 any intention of returning to the FCTC?

19 A No, I did not.

20 Q You did not tell agent Perez that?

21 A I did not.

22 Q Can you tell of any reason why agent Perez
23 would make that up?

24 A Yes, I could.

25 Q I am not asking you to explain. Yes, you can.

rg ss Phillips-cross-redirect

Mr. Phillips, can you tell of any reason why Mr. Lenci made up the name Robert Muller?

A Yes, I can.

Q You have stated on your direct testimony that you never wanted to leave Danbury, is that correct?

A That's correct.

Q You also stated that purportedly a Mr. Moody told you that you would be returning to Danbury if you didn't act like a wise guy, is that correct?

A If I didn't quit acting.

Q And yet you never turned yourself back into go back to Danbury, is that correct?

A That's correct.

MR. O'CONNOR: I have no further questions.

THE COURT: Any redirect?

I know you don't mean any harm by it, but if things are to be transferred to the jury, it should be done through the court clerk, I know you both didn't mean any harm by it, but you might just as well know what my rules are.

MR. ELLIS: Could I interrupt just for a moment and take those two exhibits for the purpose of using them?

THE COURT: Yes.

MR. ELLIS: I have no objection to waiting until

the jury finishes looking at them.

THE COURT: No, the jury can always look at them. They are in evidence.

(Pause)

REDIRECT EXAMINATION

BY MR. ELLIS:

Q Mr. Phillips, I show what has been received in evidence as Government's Exhibit 5. That is a request for transfer form, is it not?

A That's what it is known as. Yes, it is a request for interview.

Q For interview?

A Right.

Q That purportedly has your signature, is that correct?

A It has something that is supposedly to be my signature.

Q Are you stating to the jury and to the Court that that is not your signature?

A That's what I am saying.

Q Did you at any time make a request for a transfer to a halfway house?

A No, I did just the opposite. I said I didn't want to go there after 29 months.

Q To whom did you say this?

A Mr. Bill Fenton, who was my case manager up in Danbury.

Q How many times?

A On three occasions.

Q Where?

A In the FCI in Danbury.

Q It is your testimony that you never made a request for a transfer?

A I didn't want to go to the halfway house so I wouldn't make a request for it.

MR. ELLIS: I have no further questions.

THE COURT: Any recross?

MR. O'CONNOR: No recross.

THE COURT: All through with this witness?

MR. ELLIS: Yes.

THE COURT: You may step down.

(Witness excused.)

THE COURT: Next witness.

MR. ELLIS: Your Honor, the defendant rests.

THE COURT: The defendant rests.

MR. O'CONNOR: Your Honor, I will have one rebuttal witness. May I have a minute, your Honor?

THE COURT: Yes.

1 rg ss

2 (Pause)

3 THE COURT: Mr. Matteries will get the
4 witness for you.

5 MR. O'CONNOR: I wanted to talk with him, your
6 Honor. That's why I wanted to take a minute.

7 THE COURT: All right, if you will just be
8 seated, we will take a recess after the jury finishes
9 examining the documents.

10 (Pause)

11 THE COURT: We will take a short recess now.
12 Don't discuss the case.

13 (Jury not present.)

14 THE COURT: Gentlemen, for your information,
15 at least when you are before me, as I indicated before,
16 there should be no contact between counsel and jurors and
17 that applies in the courtroom as well as outside. I know
18 it was completely innocent and nobody intended anything,
19 and it is a longer walk for Jimmy to go down and get them
20 and hand them to the jury, but it is better if you do
21 not have any comments to the jurors at all at any time.
22 The other thing is you never leave the courtroom while
23 the Judge is on the bench without the Judge's permission.

24 MR. O' CONNOR: I misunderstood you, your Honor.

25 THE COURT: All right, we will take a recess.

1 rg ss

Lenci-direct

66

2 (Recess)

3 (Jury present.)

4 MR. O'CONNOR: The government calls Vincent Lenci
5 again.

6 V I N C E N T L E N C I , resumed.

7 THE COURT: You are still under oath, Mr. Lenci.

8 FURTHER DIRECT EXAMINATION

9 BY MR. O'CONNOR:

10 Q Mr. Lenci, I will show you Government's Exhibit 6
11 for identification and ask you if you can identify it.

12 A Yes. It is a report, an arrest report, made
13 out by myself for Mr. Robert Muller.

14 Q When was that made?

15 A On the 14th of April.

16 Q 1977?

17 A Yes.

18 MR. O'CONNOR: We offer Government's Exhibit 6.

19 MR. ELLIS: Your Honor, may I ask a few questions
20 on Voir Dire?

21 THE COURT: Certainly, yes.

22 VOIR DIRE EXAMINATION

23 BY MR. ELLIS:

24 Q Mr. Lenci, is this your handwriting?

25 A Yes, it is.

1 rg ss

Lenci-direct

2 Q On both pages?

3 A Yes. Front and back actually, but to photostat:
4 it you had to take it separately.

5 Q This was done on April 14th, 1977?

6 A Right.

7 MR. ELLIS: Your Honor, I don't object. I don't
8 deny that this, according to his testimony, is his handwriting
9 and that he says it relates to the defendant.

10 THE COURT: All right, it will be received
11 in evidence.

12 (Government's Exhibit 6 received in evidence.)

13 THE COURT: Anything further?

14 MR. O'CONNOR: I just have one further question.

15 DIRECT EXAMINATION CONTINUED

16 BY MR. O'CONNOR:

17 Q Is there a single reference --

18 THE COURT: It speaks for itself.

19 Q - to Raymond Phillips at all in that report,
20 Mr. Lenci?

21 A No, there is not.

22 Q Were you telling the truth earlier this afternoon
23 when you testified?

24 A Yes, I was.

25 MR. O'CONNOR: Thank you. That's all.

THE COURT: Anything, Mr. Ellis?

FURTHER CROSS-EXAMINATION

BY MR. ELLIS:

Q Did you ask for any identification of the person who you detained at that point, who was in that car?

A He produced none. I asked, but he produced none.

Q You didn't ask him for his wallet or his driver's license or anything?

MR. O'CONNOR: Asked and answered, your Honor.

THE COURT: No, I will permit it.

A I asked him for identification. He had none. He said he doesn't have a driver's license.

Q Officer Lenci, did you ask this person that you detained for his driver's license?

A Yes, I did. That would have been suitable identification if he had.

Q Did you ask him whether he was the person who was driving the car?

A As a matter of fact, he had stated that a friend of his, Frank Palmer, was the driver, but when I asked who Frank Palmer was and what did he look like, he described himself, the same physical description, the same color clothes.

Q You mean he gave you a description of a person

1 rg ss Lenci-cross

2 and the description was the same as Mr. Muller?

3 A Basically the same as himself.

4 Q But the other person could have fit that
5 description?

6 A Yes. Frank Palmer was the name.

7 Q Did you ask this person you identified as
8 Mr. Phillips whether he had a driver's license?

9 MR. O'CONNOR: Asked and answered about five
10 times, your Honor.

11 THE COURT: Yes.

12 MR. ELLIS: I have no further questions.

13 THE COURT: You may step down.

14 (Witness excused.)

15 MR. O'CONNOR: The government rests, your Honor.

16 THE COURT: Both sides rest?

17 MR. ELLIS: The defendant rests, your Honor.

18 THE COURT: Would you step up just a moment,
19 gentlemen.

20 (At the bench.)

21 THE COURT: I assume you make the same motions
22 that you made at the end of the Government's case and you
23 are now making it at the end of the entire case, a motion
24 for a judgment of acquittal?

25 MR. ELLIS: Yes.

1 rg ss

2 THE COURT: The motion is denied with an
3 exception.

4 (In open court.)

5 MR. O'CONNOR: Your Honor, Mr. Ellis, Ms. Russell,
6 ladies and gentlemen of the jury:

7 I will explain why I addressed Ms.
8 Russell and not the rest of you by your names. That's
9 because she is the forelady of the jury. Mr. Ellis and I
10 do not intend you any slight by not addressing you by
11 name, though.

12 This has been a short trial, as has been
13 stated at the beginning of the trial, but it an important
14 trial. It is important to the defendant and it is important
15 to the government because basically what we have here is a
16 case where a man is serving time after a conviction.
17 He is then given a break by being put into a halfway house
18 and then he escapes, he doesn't return. He is supposed
19 to be still serving the time for the original conviction.

20 A hassle? Is it more of a hassle to be in
21 a halfway house and being able to work at night and being
22 able to keep the money then to be in a regular prison?
23 The very defense doesn't make any sense at all. The
24 facts are quite clear. He was in a regular prison at
25 Danbury. Less than a month after being put in the halfway house

1 rg ss

2 where it is a lot easier to escape, he escapes. Those
3 are the facts.

4 What has the government proved to you today?
5 First, the government proved that Raymond Phillips, the
6 defendant in this case, Mr. Phillips right here, was in
7 the custody of the Attorney General by direction of himself
8 after Phillips was convicted of a federal crime.

9 The proof also established that he did not
10 return of his own free will at 1:00 a.m., April 13, 1976
11 as he was supposed to do and that he never returned. He
12 had many opportunities. He wasn't picked up for over a year
13 and he never returned. That's all noncontradicted. Everything
14 else there are arguments about, but that was all the
15 government had to prove in this case.

16 One, that he was in custody; two, that he left
17 of his own free will and three, that he did not return.
18 We have proved that and there is no dispute about it.

19 Instead the defendant says it was a hassle.
20 That was the reason he left. There are lots of dispute
21 about that, and it is really irrelevant, because a hassle
22 is not enough of an excuse for a man serving a prison
23 sentence to just escape. That just cannot be. What kind
24 of a system will we have if every defendant took it upon
25 himself whenever he felt it was a hassle to just leave?

1 rg ss

2 That doesn't make any sense at all.

3 But what else did we prove? I think one
4 of the most important things we proved was when Officer
5 Lenci took the stand--because what did Phillips do when
6 he was finally caught a year later? He lied. He said
7 that he was Robert Muller. Lenci went away, but then he
8 came back and picked him up. Once he was picked up, Phillips
9 knew eventually they would be able to tell he was Phillips
10 and then he started saying he was Phillips.

11 But what was his first reaction? That he
12 was Robert Muller, because he was trying to avoid confinement.
13 He did not want to be in custody any longer, and this is a
14 year later.

15 Now, the defendant says he made a phone call about
16 a year later. That may or may not be true. It may be
17 that somebody told him "Turn yourself into the FBI. If
18 you want to come back, come back." The fact is, totally
19 undisputed, that he never did turn himself back in. His
20 defense seems to be that he loved it up in Danbury, which
21 is a security prison, and didn't like the idea of being
22 in a place that had no custody, the hotel. That sounds a
23 little absurd, and it is, because if you remember he
24 says that a Mr. Moody, who may or may not exist, that a Mr.
25 Moody told him if he didn't stop acting like a wise guy

1 rg ss

2 he would go back to Danbury. Let's face it, if he wanted
3 to be in Danbury and if this is what he supposedly said
4 to him, he could have gone back to Danbury anytime he
5 wanted, so that's all a lie.

6 But Mr. Phillips made the irreparable mistake.
7 He lied to you on the witness stand. I think he lied to
8 you throughout all his testimony, sometimes it is harder to
9 prove some things than others. You have to believe either
10 Lenci or Phillips as to which was true. The last exhibit,
11 6, was a handwritten report by Lenci on the day he
12 arrested Phillips as to which the only reference was Muller.
13 Phillips said he was Muller. So the report by Lenci the
14 same day that he arrested Phillips is Muller. There is no
15 mention of Phillips at all.

16 Why would Lenci lie? The defense in its final
17 analysis is basically saying that a conspiracy was started,
18 a conspiracy by Lenci and then by Perez and then by the
19 entire United States government, to fabricate a case based
20 on Phillips saying he was Muller. That's ridiculous.
21 He is in a halfway house; the government is giving him
22 a break; he then escapes on his own, doesn't want to come
23 back, and then it is the government that's starting the
24 conspiracy? What for, to put him back in Danbury? The
25 whole thing doesn't make any sense at all.

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2 And why would Lenci lie? In order to
3 believe Phillips, you have got to say Lenci is lying.
4 Lenci is not a federal employee. What possible reason
5 would Lenci lie? In order to face perjury charges?
6 That's what the ultimate outcome would be if Lenci is
7 lying that he is committing a crime. Now, why would
8 he commit a crime? To really get Raymond Phillips? Why
9 would Perez lie? He is a federal employee, but
10 why would he lie when he says that Phillips told him he
11 had no intention of ever returning? There is no reason to
12 lie at all.

13 So in order to believe Phillips you have got
14 to say that both Lenci and Perez are lying, and that's
15 really going to be the final sad day if you believe that,
16 that the two men, Perez and Lenci, totally innocent, are
17 lying, and that's what you have to do in order to believe
18 Phillips.

19 Then Phillips made what I said is the irreparable
20 mistake, because there is one way we can prove he lied,
21 quite clearly. I asked you to examine -- and this was
22 introduced by the defendant, not by the government. On
23 three different spots Raymond Phillips's signature is
24 on there by Raymond Phillips and he admits this is his
25 signature. This is a request by Phillips while he was at

1 rg ss

2 Danbury to come down to New York, to come down to the
3 halfway house, and there is the signature. When you get
4 into the juryroom you are allowed to look at these exhibits
5 again. Is that not the same signature? Is this not the
6 request of Phillips to go into the FCTC to get into the
7 halfway house? Obviously it is.

8 And why would he want to go into the halfway
9 house? Well, for all the obvious reasons. Who wants to
10 be in a security prison when you can be in a hotel, and
11 also when you get into the hotel it is a lot easier to escape.
12 It is a lot harder to get over the walls.

13 What kind of a case do we have here? We have
14 a case where Phillips is in security custody, asks and
15 gets permission to go to the halfway house and in less
16 than a month after being in the halfway house, holding
17 a job, being able to keep the money, he leaves. It is
18 too much of a hassle.

19 I will tell you what he did. He planned it
20 in advance. He asked to go to the FCTC because he knew
21 he could escape. He then worked for several weeks,
22 accumulated enough money to live on and then he cut and
23 ran. That's what an escape is all about. You don't have
24 to scale the walls to have an escape. He was every bit in
25 custody during the entire time he was in the FCTC as he was

1 rg ss

2 when he was in Danbury. And when he did not return of
3 his own free will, he committed the offense of escape.

4 I ask you to look at these documents. And I
5 ask you most of all to examine fairly, fairly to the defen-
6 dant and fairly to the government, the testimony of all the
7 witnesses. What does Lenci have to gain by lying? What
8 does Perez have to gain by lying? What does Phillips have
9 to gain by lying? If he lies and then you believe his
10 lies and he goes scot-free from here, the final joke,
11 right? The final joke. He escapes, it is open and shut.
12 He gets on the witness stand and then he pulls off the
13 big lie. We have proved plenty of lies when he took
14 the stand. And now it is going to be your duty. You
15 have got to examine the facts. That's what it all comes
16 down to, examining the facts.

17 You weigh the credibility, you look at the
18 exhibits, etc., but look at the facts. The facts are
19 he was in custody, that's not disputed; the fact is that
20 he was in custody because of a conviction, that's not
21 disputed and the fact is he left of his own free will
22 and never returned, and that's not disputed. So that's
23 what it all comes down to and that's all you have to
24 find.

25 You have to fulfill your duty here. I have

1 rg ss

2 got a duty. My duty is not to persecute, it is to prosecute.
3 The duty of the Judge will be now to give you the law. You
4 will have to pay attention to what the Judge says to you
5 about the law. Please pay attention. Please do not make
6 up your mind until you sit in that juryroom and you can
7 all sit around and discuss it. But I am totally convinced
8 that when you weigh all the facts and when you pay attention
9 to the Judge's charge you will find Raymond Phillips guilty
10 beyond a reasonable doubt of escape.

11 Thank you.

12 THE COURT: Mr. Ellis.

13 MR. ELLIS: Your Honor, Mr. O'Connor, Ms.
14 Russell and ladies and gentlemen of the jury:

15 We now come to the time when I think -- I
16 don't know what the schedule will be, but probably
17 tomorrow morning you will be charged by the Judge and you
18 will apply the law to the set of facts they developed.

19 I would like to suggest to you,, as I
20 suggested to you in the opening statement, that it is a very,
21 very simple case and also in its simplicity it is deceptive.
22 I would like to suggest to you that after considering
23 all of the evidence, I would like to suggest too that
24 the government has failed to prove the defendant guilty
25 beyond a reasonable doubt.

1 rg ss

2 May I say I never stated to anyone in this
3 court that there was any conspiracy on the part of the
4 government. That term came from Mr. O'Connor and I am not
5 making any kind of allegation such as that. I am not
6 raising anything to suggest that anyone created a case
7 or did anything improper. If anyone has made that
8 statement or made that suggestion, that suggestion came
9 from the government, not from the defendant.

10 I haven't made any statement, nor am I going
11 to suggest to you that Special Agent Perez lied. His
12 testimony, in great part, was exactly as the defendant
13 said it was. They did agree that he had said it was
14 too much of a hassle. Special Agent Perez said that he
15 stated that he was not going to return -- the defendant
16 stated he wasn't going to return. My client says that he
17 doesn't remember having said that. A conflict though
18 there may be, fundamentally their testimony agrees. They
19 do agree on the statement too much hassle, but I am not
20 suggesting to you any conspiracy or any great attempt on
21 the part of Special Agent Perez. I think that he attempted
22 to tell the truth and I would like to suggest to you that
23 my client did also.

24 I return to the testimony of Sergeant Ringler.
25 He testified that he, Mr. Phillips, stated that his name was

1 rg ss

2 Mr. Phillips.

3 On Mr. Lenci, Mr. Lenci has stated that Mr.
4 Phillips said that his name was Mr. Muller. Well, you
5 have heard the testimony of my client; that all of his
6 identification was to the effect that he indicated that
7 he was Mr. Phillips.

8 No case ever meshes completely together and
9 the details and the testimony of witnesses never mesh
10 perfectly, and you never get a picture like a puzzle so
11 you can fit every part together. There are always some
12 things which overlap and which will nver come together.

13 With Mr. Lenci, I'd like to suggest to
14 you that if a person was in a car and you asked him for
15 identification and he said he didn't have any identification,
16 didn't have anything at all, what do you normally expect
17 a police officer to do?

18 MR. O'CONNOR: Objection, your Honor.

19 THE COURT: Yes, sustained.

20 MR. ELLIS: I beg your pardon, your Honor?

21 THE COURT: I sustained the objection.

22 MR. ELLIS: I would like to suggest to you
23 that when you consider the testimony of the officer and
24 what it was that he claimed and then compare his testimony
25 with that of the other two officers, I can only say that

1 rg ss

2 there is a contradiction here. Whether it is a contradiction
3 that is so important that it goes to the vital elements
4 of this case, I suggest to you is a question. It is a year
5 later, one year later.

6 Of course he knows that a year later that he is
7 gone.

8 I would like to suggest to you that sometimes
9 when this kind of a situation develops, you take the testimony
10 of Mr. Phillips, that he made a phone call at the end of
11 three days, to go to the FBI. He panics and he doesn't do
12 anything. Then it goes on and on and on and then you
13 are caught, you have to be caught. But go back to what
14 originally caused it. No one seriously disputes the facts
15 as they were related. There again is another contradiction.
16 Mr. Phillips testified that he did not want to go from
17 Danbury to the halfway house. The government has put that
18 in issue by offering that exhibit where Mr. Phillips is
19 alleged to have signed it.

20 The testimony of Mr. Phillips is to the effect
21 "I didn't sign it." I think that, for him, is a difficult
22 point to get over and I don't wish to in anyway avoid the
23 difficulty, but all I can say to you is, all right, do
24 just what everyone has said. There are a number of exhibits
25 here that have his signature. You take that signature on

1 rg ss

2 this here and you compare the r's and the p's -- not only
3 this, but all the signatures that you have. That's a
4 decision you are going to have to make.

5 Let's go to that portion of his testimony
6 that's not challenged, that no one has put in issue.
7 The government has indicated that he was convicted, that
8 he was sentenced. He has been at Danbury House, all
9 this time and then finally he is moved to the halfway house.
10 According to Mr. Phillips's testimony, "I did not want to
11 go and I said I didn't want to go."

12 All right, he goes. Let's assume that you say
13 "Well, if we believe that testimony of his, then he didn't
14 want to go. If we don't believe him, then he is not
15 telling the truth. Perhaps he did want to go." You can
16 go either way on that. You will discuss it among yourselves.
17 Then turn to the testimony of what happens during the
18 four weeks.

19 If he is going to escape, there is no problem,
20 there is not problem on his simply picking up two or three
21 days after he gets to that halfway house, no problem on
22 that. No one is watching him. All he has to do is just
23 pick up and leave, go.

24 Now, what holds this man for four weeks? He
25 is working. Evidently there is no complaint concerning his

1 rg ss

2 work record. He is earning \$75 a week and \$15 in tips;
3 he is living at the halfway house. If he wanted to take
4 off and escape in two or three days, go off and escape
he could escape in two or three days, go off and work
under another name, earn money, that's not a problem.

7 How did he live for a year if it is a question
8 of the money?

9 MR. O'CONNOR: Objection.

10 THE COURT: Yes, sustained.

11 MR. ELLIS: His testimony is he was there for
12 four weeks and the situation -- well, you heard his
13 testimony.

14 The first week he worked. The first weekend
15 he stayed at that Center.

16 The second week he works, no problem. The
17 second weekend he stays at that Center.

18 The third week he works and then Mr. Moody,
19 whom I take it, according to what the government wishes to
20 suggest, is some imaginary creature, I guess, but Mr.
21 Phillips said Mr. Moody suggested to him, in effect, that
22 he ought to be leaving for the third weekend, but he doesn't
23 have any place to go. So he stays there that third weekend.

24 Comes the fourth week he works and the fourth
25 weekend he takes a request -- he makes out a pass request and

1 rg ss

2 he puts down the name of Frank Elwood who lives at 324 West
3 84th Street. Then in order to meet the requirements -- he
4 is staying over in Brooklyn, but in order to meet the
5 requirements the prison has set up, he then finds out
6 or he gives them the telephone number of a park -- of a
7 pay phone in a park on Riverside Drive and at nine o'clock
8 in the morning he is there and the phone call is made. He
9 answers it. The regulation is complied with, technically.

10 He goes off, comes back Monday morning and there
11 is no problem, except that evidently someone checked again
12 on that phone and that phone wasn't in a house, it was a
13 pay phone.

14 "You are a wise guy and if you don't straighten
15 up you go back to Danbury." Whether this be logical or
16 illogical, the reaction of the defendant is that I am
17 going to lose either way and he is gone.

18 What was it that the FBI agent said that Mr.
19 Phillips said? "Too much hassle." I suggested to you
20 in the opening statement that it was a deceptively simple
21 case and that the real problem is that sometimes if you
22 don't fit into the exact hold and you can't make the
23 adjustment and you blow it, consequences follow that you
24 don't always anticipate, though Mr. Phillips should have
25 anticipated these consequences, but what's his crime?

1 rg ss

2 The government would have you believe it is this great
3 crime of escape. I would suggest to you his crime is
4 that he should have conformed and couldn't conform to the
5 pattern that they wanted and the insensitivity of the
6 bureaucracy comes through and he panics and he leaves.

7 I make no claim whatsoever that this man, Mr.
8 Phillips, hasn't been in trouble before, because you know
9 that he has, but I do make the suggestion to you that there
10 are times when you get caught in the bureaucracy and the
11 person that gets hurt is that person who is there and sud-
12 denly is just thrown out and you land anyway that you can
13 land. And his crime is that he got caught; caught because
14 he couldn't conform exactly to the regulations because he
15 doesn't have a family to go to and because he doesn't
16 have a family to go to --

17 MR. O'CONNOR: Objection, your Honor.

18 THE COURT: Yes. There is no evidence in
19 the record with respect to that.

20 MR. ELLIS: Ladies and gentlemen, I am the
21 attorney for the defendant, of course, but I am also an
22 officer of the court and you, of course, as his Honor
23 will suggest and Mr. O'Connor has stated and as his Honor
24 will state, you have an obligation to both parties. You
25 have an obligation to the government, to be fair to the

1 government, and you have an obligation to the defendant.
2 You have to make a decision, however hard it may be, based
3 upon all the evidence and all the testimony. There comes
4 a point where that's your job and that's your duty
5 and one has to say in these situations that you ask only
6 that each party, the attorneys and everyone including
7 the jury, that they do whatever their duty is as best
8 they can.

9
10 I would like simply to suggest to all of you
11 that if you think it over there may be some discrepancies
12 and there may be some contradictions, but if you give the
13 benefit of the doubt to the person -- not to the government,
14 because the government has all the facilities at their
15 disposal, but I suggest --

16 MR. O'CONNOR: Objection.

17 MR. ELLIS: You give the benefit of the doubt
18 on any of these matters if there is any question to the
19 defendant and I suggest to you if you do that you will
20 infer and come to the conclusion that the govern-
21 ment has failed to prove its case and the burden is on the
22 government; that it failed to prove the case beyond a
23 reasonable doubt and that you should find the defendant
24 Raymond Phillips innocent.

25 Thank you.

THE COURT: Mr. O'Connor, a short rebuttal.

MR. O'CONNOR: Ladies and gentlemen of the jury, this is a simple case, as we have both said a number of times. I don't think we could have had a stronger case if we had the entire thing on film and there was a movie. Mr. Phillips would have taken the witness stand and said it was doctored, somebody made up the movie. There is no way this case could be any stronger.

Mr. Ellis suggests to you that I brought up the conspiracy business. He can't have it both ways. Either Lenci is lying, Perez is lying and the ultimate thing, somebody forged Phillips's name to the request. That sounds like a conspiracy to me and that's what he wants you to believe. I want you just to weigh the credibility of the witnesses and ask you whether Lenci and Perez were lying. And look at those documents.

I asked you to compare Government's Exhibit 5 to Defendant's Exhibit A on purpose because it was the defense that put in these three signatures. I am not denying Phillips signs his names other ways at other times, but this document was one that he put in. I didn't put it in. All three signatures are exactly the same as the signature, the way he signed Raymond Phillips on Exhibit 5, and that was when he asked to go down to the

1 rg ss

2 FCTC. I would also suggest to you what difference does
3 it make whether he wanted to go to the FCTC. He was
4 in jail. This wasn't cruel and unusual punishment. He
5 was being allowed a brake. If he wanted to go or didn't
6 want to go doesn't make any difference, except for the
7 fact he lied about it. That's what makes the difference,
8 the fact that he lied about it. He lied every time he
9 was on the stand. That's what's important. I tell you
10 that Lenci and Perez are not lying. I think that's what's
11 important.

12 'There are a number of points that I could make
13 on this. He talks about this telephone number, the mythical
14 telephone number in Riverside Park. I will ask you to look at
15 the pass request. Once again, this is the defendant's
16 exhibit, not mine. When it says telephone you will see
17 that the first three numbers were put down and then crossed
18 out. He gave no telephone number. Another lie. He came
19 all the way from Brooklyn to Riverside Park. A lie.

20 Now, this fellow Moody, I just said to you there
21 may or may not be a Moody. If there is a Moody, the
22 defendant has the right to subpoena Moody and bring him into
23 Court. He didn't do it. That's because there is no way
24 in the world, if even a Moody existed, that he would back
25 up the defendant's story.

1 rg ss

2 When the defense tells you that the government
3 has all the powers, all the resources, it is a gross exaggera-
4 tion. We have the right to subpoena witnesses, but they
5 do, too, just as much, and if he wanted Moody here he
6 could have brought him here.

7 I am afraid I could stay here all day shooting
8 holes in the defense, but I don't think that's going to
9 serve any purpose. I think we have proved our case
10 beyond a reasonable doubt. The sympathy arguments, the
11 Judge has already told you are irrelevant. It will be up
12 to the Judge to decide the punishment. Your job is just
13 to decide guilt or innocence. It was my job just to
14 present the government's case and I have done that. Mr.
15 Ellis has done his job as defense attorney. The Judge
16 will do his job when he charges you. It is going to be
17 your duty to decide on the facts, and that's what I ask you.

18 The only little story I remember about what
19 it means when you finally do something and you get caught
20 and you have to pay a penalty -- when I was a kid --

21 MR. ELLIS: Objection, your Honor.

22 THE COURT: If this is argument I will permit
23 it.

24 MR. O'CONNOR: I will only be a minute, your
25 Honor.

1 rg ss

2 I was at my grandmother's house -- I guess
3 I wasn't that much of a kid -- and I went out and had a
4 good time and felt a little worse the next day than I
5 anticipated. She just said if you want to go out and you
6 call the dance and you call the tune, the next day you
7 are going to have to pay the piper.

8 Mr. Phillips wanted to leave the FCTC. He
9 called the shots. He could have returned. He didn't.
10 Now he has to pay the piper and that's all there is
11 to it.

12 Thank you.

13 THE COURT: Members of the jury, I guess
14 that concludes that part of it. My charge to you will take
15 twenty-five to thirty minutes and I don't see any sense in
16 submitting the case to you this evening. I will be
17 doing it tomorrow morning at 9:30. I have nothing on
18 in the morning, and I usually have a number of things
19 on, but for some reason or another everything is clear,
20 so there is no reason why we can't start at 9:30 in
21 the morning.

22 I am sure you are bored and I am sure you are
23 thinking I am imposing on you for me reminding you
24 not to discuss the case among yourselves or with anybody
25 else. For most of you, this is the first experience in the

1 rg ss

90

2 trial and when you go home tonight you are going to see
3 members of the household or you are going to run across
4 friends and you are going to be anxious to discuss with
5 them what your experience of the day has been, or they
6 may be inquiring with you about it. I ask you not to
7 discuss it with anybody else. Don't talk about it. You
8 are the ones who have actually seen the witnesses and heard
9 the testimony and you are the ones who have got to decide
10 this case on the basis of what you have seen, what you
11 have heard and by applying the law as I give it to you
12 and not what somebody may have done in another case.

13 After the case is over and you have finished
14 your deliberations you can talk to anybody about what
15 you did as much as you want. You will probably bore
16 them telling them about your experience, but until you
17 reach that point, don't discuss it with anyone else.

18 Have a pleasant evening and be here at 9:30.
19 Report right to the juryroom and hopefully we can start
20 the charge at 9:30.

21 (Jury not present.)

22 MR. ELLIS: Your Honor, could I just raise
23 one question belatedly and raise another question? One
24 of the exhibits, your Honor, was unwittingly underlined
25 -- a part was underlined by my client. I don't think he

1 rg ss

2 understood the significance of it. It says down here
3 "Approved: Joe Moody" and my client took the exhibit
4 and scribbled under it.

5 THE COURT: Does it make any difference?

6 MR. O'CONNOR: I can get another copy
7 by tomorrow morning.

8 THE COURT: Why don't we get another copy,
9 although I don't know that this is of any consequence.
10 Will you do that?

11 MR. O'CONNOR: I will do that in the morning.

12 THE COURT: Get the other part out of the other
13 exhibit and then would you --

14 MR. ELLIS: Could I raise a question about a third
15 exhibit? I know it is rather late to be doing it, but
16 I have no objection to the report concerning Mr. Lenci
17 which does refer to an arrest 229 of Robert Muller,
18 but some of the body of that report I would suggest
19 may be unduly prejudicial and I was wondering -- I didn't
20 notice it at the time it was being offered --

21 THE COURT: It went in without objection, too.

22 MR. ELLIS: Not that, but if the jury asks
23 for it I think at this point we could agree among ourselves.

24 THE COURT: I haven't even looked at it because
25 you didn't object.

1 rg ss

2 MR. ELLIS: There is a reference later
3 on to an arrest for a stolen vehicle.

4 THE COURT: "Placed Mr. Muller under arrest
5 and advised him of his rights at 3:20."

6 MR. O'CONNOR: I don't see where that is
7 prejudicial. He obviously was placed under arrest.

8 THE COURT: You really think that's a problem?

9 MR. ELLIS: It refers for an arrest on the
10 charge of a stolen vehicle.

11 THE COURT: It doesn't say that here, does it?

12 MR. ELLIS: Yes, it does later on.

13 THE COURT: Take a look and see.

14 MR. ELLIS: In the second paragraph "A few
15 minutes later the teletype reply came back with the car listed
16 stolen out of Bethel Court on 4/13/77."

17 I don't know that there has been any adjudication
18 to that and in order to avoid any prejudice in the matter,
19 I would like to ask that we could agree to delete portions
20 of that and let the rest of it go to the jury. I didn't
21 notice it at the time when this was presented.

22 MR. O'CONNOR: I am not worried about it. I
23 will delete it if that's okay.

24 THE COURT: All right. It was an oversight.
25 We would have eliminated it at the time.

1 rg ss

2 All right, do that. When you
3 come in in the morning, go over your exhibits, make
4 sure they are in the form that you want, because if we
5 want a note from the jury, let's not scrabble around then
6 doing that, so let's have it all down before I charge
7 and I would really hope to get underway at 9:30.

8 Have a pleasant evening, gentlemen. I'll
9 see you at 9:30 tomorrow..

10 (Adjourned to 9:30 a.m., November 1, 1977.)

1 rq ss 1

2 UNITED STATES OF AMERICA

3 vs.

77 Cr. 487 (LPC)

4 RAYMOND PHILLIPS,

5 New York, N.Y.

6 November 1, 1977

9:30 a.m.

7 (Trial resumed, jury present.)

8 THE CLERK: The Court is about to charge the
9 jury. Anyone who wishes to leave may do so now. Once the
10 charge has started, no one will be permitted to leave or
11 enter the courtroom. Marshal, will you please lock the
12 door.

13 CHARGE OF THE COURT

14 THE COURT: Members of the jury, the reason
15 for doing what we did about closing the door is obvious
16 to you, I am sure. It is so you will not be distracted
17 by people walking in and out and keeping you from paying
18 attention to the instructions that I am about to give
19 you. I know that during the course of the trial you have
20 been very attentive to the testimony and I am sure that
21 you will be as attentive to the instructions that I
22 give to you and will follow them as you are required to
23 do.

24 Now, you are about to enter upon your final
25 duty, which is to decide the fact issue in this case.

1 As I told you at the beginning of this trial, your
2 principal duty during the taking of testimony would be
3 to listen carefully and observe the witnesses as they
4 have testified, and it has been evident to me that
5 you have done so.
6

7 We have now reached that point in the
8 case where all of the evidence is in, the closing arguments
9 of the lawyers have been made, and shortly, after I have
10 completed my instructions to you on the applicable law,
11 you will retire to deliberate upon your verdict. And you
12 are to perform this final duty in an attitude of complete
13 fairness and impartiality.

14 You are to appraise the evidence calmly
15 and deliberately, and as was emphasized by me at the
16 time of your selection as jurors, without sympathy,
17 prejudice, bias or favor to one side or the other.

18 The fact that this prosecution is brought
19 in the name of the United States of America entitles
20 it to no greater consideration than that accorded to
21 the defendant. And by the same token it is entitled
22 to no less consideration. All parties are treated
23 as equals before the bar of justice.

24 Your final role, as I have told you before,
25 is to pass upon and decide the fact issues in the case.

1 rq ss 3

2 And you, the members of the jury, are the sole and exclusive
3 judges of the facts. You pass upon the weight of the
4 evidence. You determine the credibility of the witnesses
5 and you resolve such conflicts as there may be in the
6 testimony, and you draw whatever reasonable inferences
7 that are to be drawn from the facts as you determine the
8 facts to be.

9 My function at this point is to instruct you
10 on the law and it is your duty to accept these instructions
11 on the law and apply them to the facts as you determine
12 the facts to be. The logical result of that application
13 will be your verdict in this case.

14 With respect to any fact matter, it is your
15 recollection, and yours alone, that governs. Anything
16 that counsel either for the government or for the defendant
17 may have said with respect to any fact matter in evidence,
18 whether stated in a question, in argument or in summation,
19 is not to be substituted for your own independent
20 recollection. And so, too, anything the Court may say
21 during the course of these instructions or that I may
22 have said during the course of the trial with respect to
23 a fact matter is not to be taken in substitution of your
24 own recollection, which governs at all times.

25 Before we consider the precise charge of the

1 rq ss 4

2 indictment, a number of preliminary observations are in
3 order. In determining the facts, you should not be influenced
4 by rulings that the Court may have made during the trial.
5 These rulings dealt with matters of law and not questions
6 of fact.

7 Counsel for both sides had not only the right,
8 but indeed the duty, to press whatever legal objections
9 they believe existed as to the admission of offered
10 evidence. The Court's ruling on objections, made either
11 by the attorney for the government or the attorney for
12 the defendant, are not to be considered by you. Of course,
13 as I told you at the outset, where I have sustained an
14 objection to a question, you must not speculate on what
15 the witness would have said had he been permitted to
16 answer, nor may you draw any inference from the wording of
17 the question or the mere fact that it was asked. Similarly,
18 where any testimony has been stricken, it is not evidence
19 and you are bound to disregard it. I am sure that you
20 realize that in ruling on objections, the Court was deciding
21 questions of law and not questions of fact, which are solely
22 for you.

23 I also indicated to you at the beginning of
24 the trial that you should not draw any inference from any
25 facial expression of mine or tone of voice in either asking

1 rq ss 5

2 a question or sustaining objections. I hope that I have
3 kept from you any indication of what my opinion was
4 as to the veracity or credibility of any witness or as to
5 how the case is to be decided. You are the judges of the
6 fact and you are the sole judges of the guilt or innocence
7 of this defendant. I am merely a judge of the law.
8 The fact issue must be decided by you solely and only
9 within the framework of the evidence and the principles
10 of law that apply. Please don't single out any one instruction
11 of mine as stating the law. Take them all into account
12 after you have heard them all.

13 Now, you are to consider only the evidence in
14 this case, which consists of the sworn testimony of the
15 witnesses, the exhibits which have been received in
16 evidence and the presumptions which I will tell you about
17 in these instructions, such as the presumption of innocence.

18 While you are only to consider the evidence,
19 you are not limited to the bald statement of the witnesses.
20 On the contrary, you are permitted to draw from the
21 facts which you find to have been proved here such
22 reasonable inferences as seem justified to you in the
23 light of your own experience.

24 An inference is merely another word for a conclusion
25 which reason or common sense leads you to draw from the facts

1 rq ss 6

2 that have been proved here

3 You will recall that I told you that an indict-
4 ment is merely a formal method of accusing a defendant of
5 the crime charged and itself is not evidence against
6 the defendant, nor is any weight to be given to the fact
7 that the indictment has been returned against the defendant.
8 As I have said, the defendant has pleaded not guilty and
9 thereby has put in issue the charge set forth in the
10 indictment.

11 The defendant, as I said, has pled not guilty
12 and the burden is on the prosecution to prove guilt
13 beyond a reasonable doubt. This burden never shifts to
14 a defendant for the law never imposes upon a defendant in
15 a criminal case the burden or duty of calling any witnesses
16 or producing any evidence. The law presumes the defendant
17 to be innocent of crime and thus a defendant, although
18 accused, begins the trial with no evidence against him
19 and the law permits nothing but legal evidence presented
20 before you as jurors to be considered in support of any charge
21 against a defendant. Presumption of innocence remains
22 with the defendant through out the trial in your deliberations
23 until such time, if ever, as you are satisfied unanimously
24 of guilt beyond a reasonable doubt. Thus, the presumption
25 of innocence alone is sufficient to acquit a defendant unless

1 rq ss 7

2 and until, after careful consideration of all the evidence
3 in the case, you as jurors are unanimously convinced of
4 guilt beyond a reasonable doubt.

5 Generally speaking there are two types of
6 evidence from which a jury might properly find the truth
7 as to the facts in a case. One is direct evidence. That
8 is the testimony of an eye witness; somebody who saw or
9 heard something done or said, the other is circumstantial,
10 or indirect evidence as to proof of a chain of circumstances
11 pointing to the existence or non-existence of certain
12 facts. The law makes no distinction between direct
13 and circumstantial evidence, but merely requires the
14 jury find the facts in accordance with all the evidence
15 in the case, both direct and circumstantial.

16 We have an example which most of the judges
17 in this Court commonly use to show the difference between
18 direct and circumstantial evidence. As you came in
19 this courtroom today, and as you can see by looking out the
20 window now, this is a beautiful, gorgeous fall day, not
21 a cloud in the sky, the sun shining nice and brightly,
22 no indication of anything but that it is going to remain
23 that way for a considerable length of time. That's direct
24 evidence.

25 Now let's assume that this is the type of day,

1 rq ss 3

2 but we weren't here on the 27th floor, but down on the first
3 floor just off the entrance to the courthouse and in
4 one of those courtrooms that we have down in there. There
5 are no windows and you can't see outside. Let's assume
6 that under the circumstances as they exist we were in
7 that courtroom about an hour, and hour and a half. Let
8 us assume after that hour, hour and a half we were in
9 there, we saw a spectator enter the door, you could
10 observe his clothes were damp, his hair was damp and
11 there were a few droplings of water on his face.

12 Assuming two or three minutes later somebody
13 else comes in he has an umbrella in his hand and a hat
14 in his hand and the umbrella and hat are dripping water.
15 You can assume from those facts that while there had been
16 such a nice beautiful day when you came in, that the
17 weather had changed and in fact it was raining. That's
18 circumstantial evidence, a chain of circumstances leading
19 to the existence of certain facts. I have said the law
20 makes no distinction between direct and circumstantial
21 evidence, but merely requires that you find the fact
22 in accordance with all the evidence in the case, both
23 direct and circumstantial.

24 This has been a short case, to say the least,
25 and I don't intend to review with you the evidence in

1 rq ss 9

2 any detail at all, except in respect to certain particular
3 instructions that I will give you, but let me just recall
4 for you the witnesses who appeared, in the order in which
5 the appeared, with a brief description of who they were.

6 The first witness was Matthew Walsh. He
7 is employed in the Federal Bureau of Prisons and the
8 head office of the Federal Community Treatment Center
9 here in New York. The second witness was Vincent Lenci,
10 an officer with the Westchester County Parkway Police.
11 The third witness was Peter Ringler, a sergeant of the
12 Westchester County Parkway Police. The fourth witness was
13 Julian Perez, special agent of the Federal Bureau of
14 Investigation. Following that the government rested its
15 case. The defendant then took the stand and after
16 the conclusion of his testimony the defendant rested and then
17 Vincent Lenci of the Westchester County Parkway Police
18 was recalled. He was asked a few questions following which,
19 both sides rested.

20 With that in mind I am going to read to you
21 the indictment. It charges the defendant with
22 violating Title 18 of the United States Code; 751(a),
23 which provides, in pertinent part as follows:

24 This is the statute with which the defendant
25 is charged with violation.

1 rq ss 10.

2 "Whoever escapes, or attempts to escape
3 from the custody of the Attorney General or his authorized
4 representative, or from any institution or facility in
5 which he is confined by direction of the Attorney General,
6 commits a crime."

7 The indictment reads as follows:

8 The grand jury charges: On or about the 13th
9 day of April, 1976 in the Southern District of New York --
10 and for our purposes the Southern District of New York
11 includes New York County, Bronx County, Westchester County
12 and some other counties on up to just south of Albany.

13 On or about the 13th day of April, 1976, in
14 the Southern District of New York, Raymond Phillips,
15 the defendant, unlawfully, intentionally and knowingly, did
16 escape from the Federal Community Treatment Center, New
17 York City, in which institution said defendant had been
18 confined by direction of the Attorney General of the
19 United States by virtue of a conviction under a law of the
20 United States.

21 Before you can find the defendant guilty of the
22 charge set forth in the indictment you must find the
23 following elements beyond a reasonable doubt, and I will
24 define for you later on what we mean by the term reasonable
25 doubt.

rg ss ll

You must find first that on April 13, 1976, the defendant was legally confined by direction of the Attorney General pursuant to a conviction for a crime committed against a law of the United States in a facility authorized by the attorney and second, that the defendant did escape from such institution -- that is that he did knowingly, voluntarily and willfully depart and with the intent to avoid confinement.

Let me now describe for you the term escape as it is in the context of the statute which is involved: escape connotes an attitude of mind as well as an act. A person escapes when he does so with the desire and intent to avoid confinement. A voluntary departure from custody is an escape. Thus, you must find, in order to convict a defendant beyond a reasonable doubt, that he intended to leave and did leave the facility. The length of time the defendant was outside the facility is insignificant. The crime of escape is complete upon the intention of leaving the facility, no matter for how short or how long the duration.

Let me further define for you what is meant by knowingly and voluntarily and intentionally.

An act or a failure to act is knowingly done if done voluntarily and intentionally and not because of

1 rg ss 12

2 mistake or other innocent reason. Knowledge and intent
3 exist in the mind. We all realize that it is not possible
4 to look into a man's mind to see what goes on there. The
5 only way that you have for arriving at a decision on
6 this question is for you to take into consideration all
7 the facts and circumstances shown by the evidence and determine
8 from all such facts and circumstances whether the requisite
9 knowledge and intent were present at the time in question.
10 Direct proof is not only unnecessary, it is impossible
11 of establishment.

12 Knowledge and intent maybe inferred from all the
13 surrounding circumstances.

14 Voluntarily means to do something willfully and
15 not because of mistake or other innocent reason.

16 At this time also let me inform you that
17 intent and motive should never be confused. Motive is
18 what prompts a person to act or fail to act. Intent refers
19 only to the state of mind with which the act is done or
20 omitted. The proof of motive is not a necessary element
21 of the crime of which the defendant is charged. Proof
22 of motive does not establish guilt, nor does want of
23 proof or motive establish that a defendant is innocent.
24 So the presence or absence of motive is immaterial, except
25 as a circumstance which the jury may consider as bearing

1 rg ss 13

2 on the defendant's state of mind or intent.

3 I told you I would inform you and instruct
4 you as to what reasonable doubt is. The question about
5 reasonable doubt -- the term almost defines itself; that there
6 is a doubt, founded in reason and arising out of the evidence.
7 It is a doubt which a reasonable person has after considering
8 all of the evidence. A reasonable doubt is not a vague
9 or speculative or imaginary doubt. It is not caprice,
10 whim or speculation. It is not an excuse to avoid
11 the performance of an unpleasant duty. It is not
12 sympathy for a defendant.

13 A reasonable doubt is a doubt which appeals
14 to your reason, your common sense, your experience and
15 your judgment. It is a doubt which would cause a reasonable
16 man, or woman like yourselves, to hesitate
17 to act in relation to your own important private affairs.
18 Mere suspicion will not justify conviction. Suspicion
19 is not a substitute for evidence, nor is it sufficient
20 to convict if you find that the circumstances merely
21 rendered an accused probably guilty.

22 On the other hand, it is not required that the
23 government prove guilt beyond all possible doubt, but
24 the proof must be of such convincing character that you
25 would be willing to rely and act on it in the important

affairs of your own life.

In sum, a reasonable doubt exists whenever, after a fair and impartial consideration of all the evidence before you, you can candidly and honestly state that you do not have an abiding conviction that the defendant is guilty of the charge.

You as jurors are the sole judges of the credibility of witnesses. You and you alone must determine what weight their testimony deserves. You are to understand that you should not be influenced by the mere number of witnesses called by either side. The weight of the evidence is not determined by the number of witnesses testifying on either side. Rather, you should consider all the facts and circumstances in evidence to determine where the truth lies.

In assessing credibility, you should carefully scrutinize the testimony given, the circumstances under which each witness has testified and every matter in evidence which tends to indicate whether the witness is worthy of belief.

The degree of credibility to be given to a witness should be determined by his demeanor, his relationship to the controversy and the parties, his bias or impartiality, the reasonableness of his statements,

1 the strength or weakness of his recollection viewed in
2 the light of all the other testimony and the attendant
3 circumstances in the case and the extent to which, if at
4 all, each witness is either supported or contradicted
5 by other evidence.
6

7 How did the witness impress you? Did his
8 version appear straight forward and candid or did he
9 try to hide some of the facts? Is there a motive to testify
10 falsely?

11 In passing upon the credibility of a witness
12 you may take into account inconsistencies or contradictions
13 as to material matters in his own testimony or any conflict
14 with that of another witness, and also any inconsistencies
15 or admissions in prior testimony or any prior statement
16 of material matters as to which he may have testified
17 upon the trial.

18 Inconsistencies or discrepancies in the
19 testimony of a witness or between the testimony of different
20 witnesses may or may not cause the jury to disregard such
21 testimony. Two or more persons witnessing an incident
22 or a transaction may see or hear it differently and
23 innocent misrecollection, like failure of recollection,
24 is not an uncommon experience. A witness may be inaccurate,
25 contradictory or untruthful in some respects and yet

1 rq ss 16

2 be entirely credible in the essentials of his testimony.

3 In weighing the effect of a discrepancy, consider whether
4 it pertains to a matter of importance or an unimportant
5 detail and whether the discrepancy results from innocent error
6 or willful falsehood.

7 If you find that any witness has testified
8 falsely you may do one of two things: you can either
9 reject all of that witness's testimony on the ground that
10 it is all tainted by falsehood and that none of it is
11 worthy of belief or you can accept that part which you
12 believe to be credible and reject only that part which
13 you believe to be tainted by falsehood.

14 Should you find that all or part of a particular wi
15 ness' testimony was false, you may not, of course, infer
16 the opposite of that testimony is the truth unless there
17 is other evidence to that effect.

18 Any testimony rejected by you as false is no
19 longer in the case insofar as any finding that you may
20 make is concerned. You will recall that I told you that
21 an inference is a conclusion which reason or common sense
22 leads you to draw from the facts which you find have been
23 proved. Thus, a finding of fact may not be established
24 merely by a negative inference arising from your disbelief
25 or rejection of testimony.

In passing upon credibility, the ultimate question for you is did the witness tell the truth here before you. It is for you to say whether or not the testimony at this trial is truthful in whole or in part in the light of his demeanor, his explanations and all the evidence of the case.

Two particular things matter here which I call your attention to. There was testimony by one of the officers called by the government to the effect that when the defendant was questioned along the highway, when his car was flashing its lights and so forth, to the effect that when he was questioned he gave the name Robert Muller. Mr. Phillips denied that he gave the name Robert Muller. If you should find that in fact he did give a false name, and if you find this beyond a reasonable doubt, that he gave the false name in order to avoid subsequent identification, that would be a fact which you may, but need not infer as a consciousness of guilt on his part.

Also there is testimony which if believed by you that after his arrest Mr. Phillips gave some testimony or made some statements to the arresting officers. Evidence relating to any statement claimed to have been made by a defendant outside of the Court and after a crime has been

1 rq ss 18

2 committed should be considered with caution and weighed
3 with care. All such evidence should be disregarded
4 entirely unless the evidence in the case convinces you
5 beyond a reasonable doubt that the statement was knowingly
6 made. I have told you before that a statement is knowingly
7 made if done voluntarily, intentionally and not because
8 of mistake or accident or other innocent reason.

9 In determining whether any statement claimed
10 to have been made by a defendant outside of court, and after
11 a crime has been committed, was knowingly made, the jury
12 should consider the age, training, experience, occupation
13 and physical and mental condition of the defendant and
14 his treatment while in custody or under interrogation
15 as shown by the evidence in the case, and whether or not
16 it was induced by any coercion or duress, and also all
17 other circumstances and evidence surrounding the making
18 of the statement, including whether before the statement
19 was made the defendant knew or had been told and understood
20 that he was not under obligation or required to make the
21 statement claimed to have been made by him; that any
22 statement which he might make could be used against him
23 in court; that he was entitled to the assistance of
24 counsel before making any statement, either written or oral,
25 and that if he was without money to retain counsel of his

own choice, an attorney would be appointed to advise and represent him free of cost or obligation.

If the evidence in the case does not convince you beyond a reasonable doubt that the statement was voluntarily and intentionally made, you should disregard it entirely.

On the other hand, if the evidence in the case does show beyond a reasonable doubt that the statement was in fact voluntarily and intentionally made by the defendant, you may consider it as evidence in the case against the defendant, if voluntarily and intentionally made by him.

I told you at the outset of the case that the law does not require the defendant in a criminal case to present any evidence or take the stand or do anything else. Where as here, however, the defendant does testify, it is your function as jurors to assess his credibility in the same manner as you assess the credibility of any other witness. One fact that I instruct you about to consider in judging credibility was any interest that a witness might have in the outcome of the trial. Obviously, every defendant has a personal interest in the outcome of the case. In appraising his credibility, you may take the fact of interest into consideration. However, it by no means follows that simply because a person has a substantial interest in a result, he is not capable of telling a straight-

forward or truthful story. It is for you to decide to what extent, if at all, his interest has affected his testimony.

In your deliberations, please do not discuss the question of possible punishment. That is a matter that rests upon my consciousness and my consciousness alone, because the Judge and the Judge alone is the one who has the obligation of imposing sentence when and if guilt is determined. If you do discuss it or consider it in any way, you are encroaching upon my function and I ask you not to do it. Your function is to consider the facts and determine the facts and my function is to pass upon the law and in the event of conviction, to impose sentence.

If you find on all the evidence that the evidence respecting this defendant leaves a reasonable doubt as to his guilt, you should not hesitate for a moment to return a verdict of not guilty. If, on the other hand, you find beyond a reasonable doubt that the law has been violated as charged, you should not hesitate because of sympathy or because of any other reason to return a verdict of guilty.

The verdict must represent the considered judgment of each juror. In order to return a verdict it is necessary that your verdict be unanimous. All jurors must

agree to the verdict. It is your duty as jurors to consult with one another and to deliberate with a view to reaching agreement if you can do so without violence to individual judgment. Each of you must decide the case for yourself, but do so only after an impartial consideration of the evidence with your fellow jurors.

In the course of your deliberations, do not hesitate to reexamine your own views and change your opinion, if convinced that it is erroneous, but do not surrender your honest conviction as to the weight or effect of evidence solely because of the opinion of your fellow jurors or for the mere purpose of returning a verdict. You are not partisans. You are judges, judges of the facts. Your sole interest is to ascertain the truth from the evidence in the case. If it becomes necessary during your deliberations to communicate with the Court, you may send a note through from the foreman, through the marshal, signed by the foreman or one or more members of the jury. No member of the jury should ever attempt to communicate with the Court by any means other than a signed writing and the Court will never communicate with any member of the jury on any subject touching the merits of the case other than in writing or orally here in open court.

You will note from the oath about to be taken by

1 the marshal that he, too, as well as all other persons,
2 are forbidden to communicate in any manner with the jury
3 on any subject touching upon the case, bearing in mind
4 that you are also never to reveal to anyone, not even
5 to the Court, how you stand numerically or otherwise on
6 the question of guilt or innocence unless and until you
7 have reached a unanimous verdict.
8

9 As you go to the jury room you will be able
10 to have a copy of the indictment, of the charge here,
11 and if you desire to have any exhibits in the jury
12 room, just send a note asking for whatever exhibits you want,
13 or for all of them. If there is any particular testimony
14 that you wish to have reread, you may send a note to the
15 Court. However, if there is testimony that you do want
16 read back to you, it would be most helpful if you could
17 pinpoint as closely as possible what part of the testimony
18 you would like to have reread to you. It is customary,
19 not obligatory, that the person occupying the number one
20 seat becomes the foreperson of the jury. You may elect
21 your own foreperson and how you conduct your deliberations
22 is entirely up to you.

23 I might add that nothing said in these instructions
24 is to suggest or convey in any any manner, any intimation
25 as to what verdict I think you should find. What the

verdict shall be is your sole and exclusive duty and responsibility. When you do announce your verdict it will be "We the members of the jury unanimously find the defendant whatever it is.

Counsel have an opportunity to make any requests or take any exceptions to the charge as I have given it. We do take that outside of the presence of the jury, so if you gentlemen just step up here, if there is anything that you have, fine.

(At the bench)

MR. ELLIS: I respectfully request, your Honor, in addition to the definitions you have given of intentionally and knowingly, that you also direct the jury that they must find specific intent on the part of the defendant to escape confinement from the Federal Treatment Center.

THE COURT: You have submitted your requests to charge. I have charged in my own language. These will be on file and I decline to charge the request. Any others?

MR. ELLIS: No.

THE COURT: Any for you?

MR. O'CONNOR: None for me.

THE COURT: Ladies and gentlemen of the jury, there is nothing left for me to charge you, but I do have the unfortunate task of separating the alternates from the

rq ss 24

regular members of the jury. I appreciate very much your being here, the attention and cooperation you have extended to the Court. We are very fortunate that all the members of the jury are still here and we have an intact original 12, but your presence was absolutely essential as it is in every case. As I said, there is a possibility that somebody may not be able to complete the performance of his jury duty.

We will swear the jurors, but before they go in, you will go in and get whatever is in there because you can't be in there when they retire to deliberate.

(The marshal was sworn.)

THE COURT: All right, I guess you can go with the marshal.

(At 10:23 a.m. the jury adjourned to the jury room to deliberate upon their verdict.)

THE COURT: Have you looked the exhibits over?

MR. O'CONNER: Yes.

MR. ELLIS: Yes.

THE COURT: Do we have your consent if they call for anyone or all of them, we have your consent to send them in?

MR. ELLIS: I agree, your Honor.

MR. O'CONNER: I agree.

THE COURT: Put them on the side with the clerk. Just stand by.

(Recess)

(Note received at 10:26 a.m.)

THE COURT: We have a note which says: "Please send all the exhibits."

All right, send in all the exhibits.

(Note marked Court's Exhibit 1.)

(Recess)

(At 11:15 a.m. the jury returned to the courtroom.)

THE CLERK: Madam Forelady, has the jury agreed upon a verdict?

THE FORELADY: Yes.

THE CLERK: How do you find the defendant Phillips?

THE FORELADY: We unanimously decided he was guilty.

THE CLERK: Ladies and gentlemen of the jury, you say you find the defendant Raymond Phillips guilty, and so say you all.

THE COURT: Do you wish the jury polled?

MR. ELLIS: There is no request for that from the defendant, your Honor.

THE COURT: Very well.

All right, members of the jury, I do appreciate

1 rq ss 26

2 and express to you my gratitude for your cooperation, the
3 attention that you have shown to the matter here and your
4 diligence in arriving on time and participating in this.
5 It is not my function to comment on your verdict. As
6 I told you, you were the tryers of the fact and you have
7 arrived at the verdict that you have.

8 I do want to say just a few
9 things that I think that may be appropriate. In my
10 opinion the jury service is perhaps the most important
11 function that any civilian can perform. If it weren't
12 for people like yourselves, and you have looked and you
13 see, and I have and we all have, that you all come from
14 different backgrounds, different experiences, different
15 businesses and so forth. It is the great mix of the
16 jury system that helps to assure that every person that
17 comes in here gets a fair and equitable trial at the hands
18 of the tryers of the fact. As I say, if we didn't have
19 that system, I think our entire democracy would fail.

20 Our most important function of this -- it is
21 an inconvenience for many of you to take time out from
22 your businesses or social or other pursuits -- you are
23 not called on too often and I urge you, everytime you get
24 the chance to respond to the call. If you have an
25 immediate problem, why, you can always get an excuse at least

1 rq ss 27

2 for a little bit of time to do it. I know you would like
3 to feel if in any way you were involved in litigation,
4 you would be hopeful that 12 people as equally conscientious
5 and dedicated as yourselves would come in and respond
6 to any dispute that you might have.

7 I urge you and encourage you to come when
8 called, even though inconvenient, and you urge any
9 members of your family or friends to come in and do this,
10 because unless we get people like yourselves in here, as I
11 say, our system of justice and our democracy will fail.

12 I am sure you have more duty to perform.
13 Perhaps you will serve on another case of mine, and if so,
14 I look forward to serving with you. If not, good luck.

15 (Jury excused.)

16 THE COURT: Today is November 1. I assume,
17 Mr. Ellis, you reserve on motions until that time?

18 MR. ELLIS: Yes.

19 THE COURT: The only thing I do ask, if you
20 do have anything of any consequence other than a pro
21 forma motion to set aside the verdict, that you do it
22 in writing before the sentencing.

23 MR. ELLIS: I will.

24 THE COURT: Mr. Phillips is in custody and
25 I assume that his last pre-sentence report only has to be

1 ra ss 28

2 updated, so we don't have to wait the usual six weeks
3 for a sentence.

4 How much time does he have to run on his
5 current sentence?

6 MR. O'CONNOR: Until February, I believe,
7 your Honor.

8 MR. ELLIS: Yes, your Honor.

9 MR. O'CONNOR: '78.

10 THE COURT: All right. I'll set the sentencing
11 down here for Wednesday, November 30th, at 9:30. I will
12 be in the courtroom across the hall. There is no bail,
13 so there is no bail application.

14 MR. O'CONNOR: There is bail, but it is only
15 technical. It is a \$10,000 bail.

16 THE COURT: I will remand the defendant,
17 in any event.

18 How probation works it, I don't know,
19 whether you go down there now or what. Maybe you ought
20 to go down there, Mr. Ellis, and see what they want to
21 do, but if you want to be present at any interview,
22 that's up to you.

23 MR. ELLIS: Is he to go down to probation
24 right now?

25 THE COURT: No, he goes down to the MCC

1 rq ss 29

2 and I think you ought to go to probation and see what
3 the procedure is from here on.

4 MR. ELLIS: Very well.

5 (End trial)

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1 elklm

2 UNITED STATES OF AMERICA

3 vs.

77 Cr. 487

4 RAYMOND PHILLIPS

5
6 Before:

7 HONORABLE LEE P. GAGLIARDI,

8 District Judge

9 New York, New York, November 30, 1977, 10:15 a.m., Rm. 2230

10
11 For the Government:

ROBERT B. FISKE, JR., ESQ.
United States Attorney for the
Southern District of New York

12
13 BY: DAVID W. O'CONNOR, ESQ.
14 Assistant United States
15 Attorney

16 For the Defendant:

WILLIAM ELLIS, ESQ.

17 - - -

18 THE CLERK: United States of America versus
19 Raymond Phillips.

20 THE COURT: Good morning.

21 MR. O'CONNOR: The Government is ready.

22 MR. ELLIS: The defendant is ready, your Honor.

23 THE COURT: All right. Mr. Phillips, is there
24 any legal reason why sentence should not be imposed at this
25 time?

1 THE DEFENDANT: No.

2 THE COURT: Mr. Ellis, any legal reason why
3 sentence should not be imposed at this time?
4

5 MR. ELLIS: Not that I can think of, your
6 Honor.

7 THE COURT: Do you have anything to say in
8 behalf of your client or do you have anything to say in
9 mitigation of punishment?

10 MR. ELLIS: I'd like to make a statement.
11 Your Honor, you sat through this trial twice, so therefore
12 it would be presumptuous for me to go through the facts,
13 so I shall not do so.

14 Also the jury found the defendant guilty,
15 and it seems to me that that was a rejection in part of
16 the statements or some of the statements which he made
17 on the stand, and I will not go into that.

18 However, I would like to say this to your
19 Honor. The pre-sentence report was made available to me,
20 and I reviewed it, and I would like to refer to the last
21 paragraph of the pre-sentence report which was presented,
22 which said, in effect, this walk-away is the defendant's
23 first known escape from correctional custody, and it
24 appears the defendant acted impulsively and without
25 considering the consequences of his action.

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I think, I'd suggest to the Court it's an accurate statement of what seems to have happened in this situation. This man has had a long criminal record, as I think his pre-sentence report indicates. But this is the first time that anything such as this has occurred, even though, as the testimony indicated, he has been permitted to leave prison when he was at Danbury and on other occasions in Vermont.

The second point I'd like to call to your Honor's attention is the fact that this defendant has approximately 200 days of good time which was forfeited, and I suggested to the Court before that the Government ought to be required to make an election in this kind of situation, either that they elect to forfeit his good time, or that they bring him to trial on this charge, but not that they be permitted to do both.

I checked for the cases on this, and I made a motion before your Honor. I realized that the authorities seemed to be rather slim for the position which I took. But nonetheless, from a very practical point of view, I would suggest to the Court that this man has in effect already served or will have served 200 extra days of good time that would have been voided if he had not done this. It seems to me that that is a penalty which has been

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Phillips

exacted by the Government through the administrative procedures.

The third point which I would like to make, your Honor, is it seems to me that if the Government is attempting to establish the policy, at least as far as this prisoner and other prisoners are concerned so that it's generally known that if men do leave a halfway house that they will be or are subject to being convicted or charged with this particular statute, if that is the point that the Government wishes to make, it seems to me that it's been well made.

I'd like to suggest, however, that there is no policy or purpose to be furthered by sending this -- by sentencing this defendant any further, particularly in view of the loss of good time. I would therefore ask your Honor that in view of the last paragraph of the presentence report, the penalty which he has already had to pay, that your Honor extend clemency to him and that he not be sentenced to any further imprisonment.

Thank you, sir.

THE COURT: Mr. Phillips, do you have anything to say in your own behalf or do you wish to present anything in mitigation of punishment?

THE DEFENDANT: No, sir. I think Mr. Ellis

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Phillips

2 wound it up pretty well.

3 THE COURT: Does the Government have any
4 comments?

5 MR. O'CONNOR: Your Honor, I think we will
6 just stand by the record of transcripts and the pre-sentence
7 report. The only thing I'd like to say for the record is
8 as to this double punishment, while it does seem to be
9 possibly unfair on its face, a careful analysis of the
10 whole concept of good time would seem to indicate that the
11 administrative penalty of good time being taken away is
12 met by just the defendant not cooperating and not paying
13 attention to rules while in prison, let alone escaping.

14 So the escape itself is, except for something
15 physically done in prison, one of the most heinous things
16 to be done by a prisoner as to escape from the authorities.
17 So the good time that he's accumulated up to that time,
18 that is an administrative act. But the escape is a
19 different thing.

20 I don't think Mr. Ellis is correct in saying
21 that the Government should be forced to make a choice. If
22 Mr. Phillips had come back after two weeks, he would have
23 lost some good time anyway and it is unlikely the Government
24 would have gone forward with this charge. But in this case
25 where Mr. Ellis is in his escape status for over a year,

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Phillips

and then when he was caught, attempted to cover up his identity, that is a separate crime, which the Government has to view with some degree of seriousness, otherwise, the whole concept of halfway house and prison itself becomes meaningless.

Thank you, your Honor.

THE COURT: I frankly was quite surprised when I originally looked at the first part of this pre-sentence report and the face sheet on the disposition of the underlying count, in which Judge Holan imposed a sentence of four years. That surprised me a little bit, until I looked and saw that there was ample reason for Judge Holan in Vermont to impose the sentence that he did, with the extensive criminal record that this defendant possesses.

I don't think any car is safe in the United States if he is loose. He's just got a penchant for stealing automobiles, and everytime he's gotten out he's gone and done the same thing and transferred them from one dealership in exchange for trade-in, supposedly, and taken another car.

In fact, there are two warrants outstanding, as I see it, for the same things that occurred during the period of time that he absented himself from the halfway

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Phillips

1 house. There is a warrant issued for larceny of a motor
2 vehicle in Newton, New Jersey, and one for two counts in
3 Ocas County of New Jersey, which is a detainer filed
4 here on January 19th, 1977.
5

6 It's just one continuous period after another
7 from stealing a car, serving his time, getting out, and
8 then within a very short time thereafter, doing the same
9 thing again. I don't think there is any doubt about that,
10 Mr. Ellis. You do indicate that you want to say something
11 with respect to that.

12 MR. ELLIS: It is true, your Honor, that the
13 pre-sentence report indicates that there were or are two
14 warrants outstanding against him on the charge of stealing
15 cars. Of course, those charges are yet to be proved, your
16 Honor.

17 THE COURT: I understand.

18 MR. ELLIS: I'd like to call your Honor's
19 attention to something else in the pre-sentence report
20 which I think is important. In verifying employment,
21 they did say that he got during this period of one year,
22 he got short-term positions through the Signet Employment
23 Agency, which they substantiated, and that he would work
24 for approximately three or four days a week.

25 Also, they verified that he had been employed

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on weekends for six months by the Island Delicatessen at 4823 18th Avenue, Brooklyn.

I recognize the justice of the remarks, but I'd like to suggest, your Honor, that this still may be the kind of situation, it's strange to make this kind of remark, but it's still in terms of the pre-sentence report, th's may still be an opportunity to give this man another opportunity to see what he can do. I realize that is a strange remark, but if you look at the pre-sentence report, there are two trends which are indicated here, your Honor.

He is now 58 years old. He's been in prison a great deal of his life. He understands that he has an opportunity to do one of two things -- he can work in a restaurant as he did during this period and make his living and stay out of prison, or else he can steal a car. Those two trends are set forth in that pre-sentence report for the year that he was out of prison.

I would ask your Honor at this point, in view of the 200 days that he lost on good time, to give him consideration at this point and perhaps place him on probation, your Honor, and see if perhaps he is able to meet the requirements of that program.

THE COURT: You have indicated what you think

1 I ought to do, and I have the obligation of doing what
2 I think is required under the circumstances. I obviously
3 will take into consideration the fact that he has for-
4 feited 200 days of good time. I obviously am only sen-
5 tencing him here and can only consider the offense for
6 which he's been convicted, namely escape from jail under
7 the circumstances which were brought out at the trial
8 here.
9

10 I would hope that in every person there comes
11 a turning point, even in those who have practiced the art
12 of engaging in criminal behavior over the period of time
13 as Mr. Phillips has for so long, and seemingly substantially
14 the same type of crime.

15 There seems to be even some indication, which
16 I will not take into consideration, that at the time of
17 his apprehension he was driving a car to which he had
18 no right to have, and that perhaps even that was a stolen
19 car. I won't consider that, because the proof is not
20 substantiated.

21 It is incredible that with only two or three
22 months to go before he would have been released from
23 custody that he did what he did, but he was gone for a
24 year, and he had that year period of time to reflect on
25 whether or not he wanted to return, and I do have to find

1 some feeling that while the probation department's indica-
2 tion that he acted impulsively and without considering
3 the consequences of his actions, he had more than a year
4 in which to reflect upon the impulsiveness of his activity,
5 and what the consequences thereof were, and neglected to
6 turn himself back in; which might have resulted in a lot
7 less serious offense than what we are actually faced with.
8

9 I just think we have to protect society from
10 this man. I think we have to protect everybody who owns
11 a motor vehicles or leaves a motor vehicle on the street
12 or even in a garage, or even motor vehicle dealers, from
13 what he is doing. I think more of that is going to be
14 left to the -- in the event there are trials and convic-
15 tions, on which I am not passing any judgment whatsoever,
16 all I'm faced with is a jail escape.

17 MR. ELLIS: Your Honor --

18 THE COURT: If we are going to keep going on
19 with this --

20 MR. ELLIS: Again, your Honor, I feel it
21 necessary to say that what he may do in the future, if
22 he makes a decision to do something like that, then of
23 course if it's a violation of the law he will be appre-
24 hended and he will have to pay the price for that.

25 THE COURT: He will. But I think the only

1 purpose in sentencing here in this particular case, I
2 don't think there is any question in my mind that there is
3 no -- there is no question in my mind that rehabilitation,
4 the possibility of rehabilitation is highly remote, and
5 determines -- he's been in jail enough so that he hasn't
6 been deterred.
7

8 I think our only real purpose in sentencing
9 here is protection of the public from a reptition of what
10 he has been doing in the past. And I think that that is
11 one of the objectives of sentencing, and I think it's
12 the only applicable one here.

13 MR. ELLIS: Could I say, your Honor, that if
14 this man did in fact steal the cars, in view of the de-
15 tainers which have been lodged against him --

16 THE COURT: Not the current ones. I am
17 talking about his past history. He was sentenced in 1973
18 before Judge Holan for four years, to begin another State
19 confinement for exactly the same offense.

20 MR. ELLIS: Because he paid four years for
21 that, your Honor.

22 THE COURT: I'm sure he did, because Judge
23 Holan sure felt the same as I do, that he hasn't learned
24 what it was to be free, and just his persistence of taking
25 automobiles that don't belong to him.

elklm

Phillips

I think under all the circumstances it is the judgment of this Court that the defendant be committed to the custody of the Attorney General or his duly authorized representative for a period of 15 months. I have taken into consideration the fact that he has forfeited his good time that he had coming to him, otherwise his sentence would have been the additional period of time for which he has forfeited. That is the judgment of the Court.

Mr. Phillips, you have 10 days within which to file a notice of appeal. If you do not have the funds with which to pay the filing fee, the Court will direct that the notice of appeal be filed without payment of the fee. If you do not have sufficient funds to employ an attorney to prosecute an appeal on your behalf, upon timely filing of the applicable papers, the Court will appoint an attorney to represent you on the appeal.

And I see no reason why, if there is going to be an appeal, why Mr. Ellis is not competent to prosecute the appeal. He did an extremely capable job on your behalf, he conducted himself in a manner that is in the highest traditions of the Bar and I do compliment him on the excellent representation he gave of you under the circumstances. That is the judgment of the Court.

(Time noted: 10:35 a.m.)

